DEVELOPMENT OF LAW
RELATING TO MOTOR ACCIDENT CLAIMS AND
IMPORTANT JUDGMENTS/ORDERS PASSED BY
DELHI HIGH COURT

India has largest number of road accidents in the world. More than one lakh people die in road accidents in a year and the average number of deaths per day are more than 300, meaning thereby that more than ten persons die every hour. Total number of accidents in Delhi in last 22 months had been more than 15,000 resulting in 3647 deaths.

Most of the victims of the road accidents are poor people walking on the road or riding on bicycles/scooters. The drivers of the cars/trucks have least respect for the road users and they do not even care to stop and provide medical aid to the victims of the road accidents. The insurance companies wait for a case to be filed before Motor Accidents Claims Tribunal and on receipt of summons also, no steps are taken to resolve the case and the trial goes on for years. This is a matter of serious concern.

The reasons for delay in disposal of claim cases are as under:-

(i) Delay in service of the driver and owner.

(ii) Non-appearance of the driver and owner despite service.

(iii) Non-production of the driving licence by the driver and the owner.

(iv) Non-production of the insurance policy, registration cover, fitness certificate and permit by the owner.

(v) The plea of the owner that he has sold the vehicle before the accident.

(vi) Avoidance of liability by the insurance company on the ground that the driver and owner are not producing the relevant documents.

(vii) In the case of uninsured vehicles, claimants are unable to enforce the award against the owner.

I. ENFORCEMENT OF SECTION 158(6) OF MOTOR VEHICLES ACT, 1988.

1. Section 158(6) of the Motor Vehicles Act was incorporated in 1994 and it provides that the SHO of the Police Station shall send Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR and a copy to the concerned Insurance Company. The object of Section 158 (6) of the Motor Vehicles Act is that the police is the first agency to take cognizance of the accident and it has the entire evidence required for initiating the proceedings for compensation.

2. During the course of hearing of FAO No.842/2003 on 21st April, 2009, it was noticed that Delhi Police was not implementing Section 158(6) of the Motor Vehicles Act despite directions passed by the Hon'ble Supreme Court in **General Insurance Council vs. State of Andhra Pradesh, IV(2007) ACC 385 (SC).** Notice was, therefore, issued to the Commissioner of Police to place on record the status on implementation of Section 158(6) of the Motor Vehicles Act along with the data of compliance for the last 22 months from the date of the judgment of the Hon'ble Supreme Court. Directions were also given to the Claims Tribunals to place on record the compliance of Section 166(4) which provides that the Claims Tribunals shall treat the report forwarded to it under Section 158(6) as an application for compensation.

3. On 18th May, 2009, the DCP (Hqrs.) of Delhi Police filed an affidavit stating that 15,370 accidents took place during July, 2007 to April, 2009 and the information in the prescribed proforma under Section 158(6) of the Motor Vehicles Act, 1988 has been sent to the Motor Accident Claims Tribunals. The Registrar (Appellate) of the High Court also filed a report received from the Motor Accident Claims Tribunals in which it was stated that no report has been received by the Claims Tribunals from Delhi Police under Section 158(6) of the Motor Vehicles Act, 1988. In view of the contradictory stand taken by the Delhi Police and the Claims Tribunals, the Delhi Police was directed to produce the documents

relating to the compliance of Section 158(6) of the Motor Vehicles Act with respect to eleven Police Stations on 28th May, 2009.

4. On 28th May, 2009, Dy. Commissioner of Police (Hqrs.) of Delhi Police admitted non-compliance of Section 158(6) and filing of incorrect affidavit before the High Court whereupon proceedings for contempt of Court were initiated against DCP (Hqrs.). DCP (Hqrs.) tendered unconditional apology and sought permission to withdraw the incorrect affidavit. Delhi Police agreed to strictly follow the law in future and consider the suggestions for streamlining the motor accident cases.

5. On 8th June, 2009, Delhi Police filed an undertaking to start the following initiatives to implement Section 158(6) of the Motor Vehicles Act:-

(i) Delhi Police has started a website (www.dpacciclaim.in) in which all relevant information/documents are placed which can be downloaded by the claimants, Insurance Companies as well as Tribunals.

(ii) Registers to be maintained at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned MACT, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register.

(iii) Delivery of FIR to the Claims Tribunals on the date of registration.

(iv) Entries in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).

(v) Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.

(vi) ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) to the learned MACT, owner and insurer of the offending vehicle and the victim/his or her family.

(vii) MACT Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.

(viii) Monthly meeting of ACsP, PG Cell, In-charge of MACT Monitoring Cells with the Claims Tribunals.

(ix) Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.

(x) Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.

(xi) Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.

(xii) Installation of checklist boards in SHOs rooms.

(xiii) Establishment of District Cells as pilot project in three districts.

6. The Delhi High Court passed following directions to Delhi Police on 8th June, 2009:-

"(i) In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

"14. In case of death: Names and address of the next of kin of the deceased.
15. In case of injury: Nature of injuries suffered
16. Names and addresses of the eye-witnesses.
17. In case of transport vehicles:
(i) Particulars of the permit.
(ii) Particulars of the fitness certificate".

(ii) The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the offending vehicle. MLC and Post - mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.

(iii) Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the

Insurance Company along with the aforesaid documents."

7. With respect to the accidents during the period 1994-2009, Delhi Police has been directed vide order dated 5th November, 2009 to carry out the following action:-

(i) The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14th November, 1994.

(ii) The Delhi Police shall collect the list of all pending cases filed after 14th November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.

(iii) The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal.

(iv) The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/post mortem report, site plan, driving licence, registration cover, Insurance policy, fitness, permit, etc. at the time of hearing of the cases before the Claims Tribunal.

(v) The Delhi Police has already deputed a Naib Court with every Claims Tribunal. The Naib Court shall remain present at the time of hearing of all the cases and the Claims Tribunal shall pass the appropriate order for filing of the report under Section 158(6), service of the owner, driver and eye-witness or production of documents as the case may be. The copy of such orders shall be given dasti to Naib Court whereupon the Naib Court shall note down the next date of hearing of the cases, coordinate with the concerned Police Stations and provide the status report of those cases to the Court on the next date of hearing. The compliance of this order shall be done by Delhi Police in a phased manner.

(vi) In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACsP in terms of order dated 8th June, 2009.

II. ENFORCEMENT OF SECTION 166(4) OF THE MOTOR VEHICLES ACT, 1988.

1. Section 166 (4) of the Motor Vehicles Act was also incorporated in 1994 and it provides that the Claims Tribunal shall treat the Accident Information Report (AIR) under Section 158(6) as a claim petition. The object of Section 166(4) of the Motor Vehicles Act is that poor and helpless victims of the road accident may be ignorant of their rights and, therefore, the cognizance of the claim for compensation be taken by the Claims Tribunal directly on the basis of the Accident Information Report of the police without the requirement of a separate claim petition to be filed by the claimant. However, this provision was not being enforced as the police was not filing the Accident Information Report with the Claims Tribunal. With the undertaking of the police and the directions of the High Court to the police to strictly enforce Section 158(6) of the Motor Vehicles Act, the Delhi High Court has given following directions to the Motor Accident Claim Tribunals on 8th June, 2009 for enforcement of Section 166(4) of the Motor Vehicles Act:-

> "(i) Maintenance of a register for recording of the FIR which shall be received daily from the police stations. The Accident Information Report and private claim petition filed in respect of an FIR be marked in this register.
> (ii) Maintenance of a separate institution register for registering the AIR as miscellaneous application.
> (iii) Listing of AIR on the judicial side and issuance of notice to the claimant, owner, driver and Insurance Company.
> (iv) Notice to the claimant, owner and driver be served through the Investigating Officer.
> (v) Notice of Insurance Company be served through the nominated counsel of each company.
> (vi) AIR be listed as a separate category in the cause list as miscellaneous application.
> (vii) After appearance of the claimant, the AIR be registered as a claim petition.
> (viii) If the claimant has filed a separate claim petition, the AIR be tagged with the claim petition."

2. All the Motor Accident Claims Tribunals have set up the aforesaid system for compliance of Section 166(4) of the Motor Vehicles Act, 1988.

3. The net effect of aforesaid directions is that the Delhi Police is filing Accident Information Report along with the relevant documents including driving licence, registration cover, insurance policy, fitness and permit of the offending vehicle, before the Tribunal within 30 days of the accident. Simultaneously, the Investigating Officer is also producing the owner, driver, eye-witness and the claimants before the claims Tribunal. Insurance Companies are already represented through their retainers and the Claims Tribunals straight away proceed to record the statements of all concerned, verify the documents and pass an award. 25 cases of accident have been settled by the Claims Tribunals from 1st July, 2009 to 20th July, 2009 on the basis of the AIR filed by Delhi Police.

III. DIRECTIONS TO INSURANCE COMPANIES TO DEPOSIT THE ADMITTED AMOUNT WITH THE CLAIMS TRIBUNALS.

1. The Insurance Companies have not been settling the claims of the victims of the road accident on the ground that they have no notice/intimation of the road accident until the receipt of the notice from the Claims Tribunal. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim.

2. Vide orders dated 8th June, 2009 and 5th November, 2009 in FAO No.842/2003, the Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days wherever the accident,

driving licence, permit, evidence and other documents relate to Delhi and 90 days where the documents relate to outside Delhi. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the Insurance Companies have been directed to deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal.

3. In order to streamline the system, it is directed that henceforth immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award.

4. With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies are directed to appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned order in writing about the amount payable in accordance with law. The order of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the order of the designated officer.

IV. SPECIAL SCHEME FOR SETTLEMENT OF MOTOR ACCIDENT CLAIMS WITHIN 120 DAYS IN RESPECT OF ACCIDENTS DURING 15.1.2010 TO 14.7.2010.

1. Vide order dated 5th November, 2009 in MAC.APP.236/2009 & 238/2009, Delhi High Court constituted a Committee comprising of Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law & Justice and Company Affairs; and Joint Commissioner of Delhi Police. The Committee consulted all the 17 Insurance Companies and with their consent, prepared Claims Tribunal Agreed Procedure which was approved by Delhi High Court.

2. The Delhi Police agreed to implement the said procedure on trial basis as a pilot project for a period of six months.

3. The salient features of the Claims Tribunal Agreed Procedure approved by the Delhi High Court are as under:-

(i) The Investigating Officer of the Police shall intimate the accident to the Claims Tribunal within 48 hours of the accident. The particulars of the accident shall be uploaded on the website of the Delhi Police and the intimation shall also be given to the Insurance Companies.

(ii) The Insurance Company shall appoint a designated officer who shall be responsible for dealing/processing of that case.

(iii) The investigating officer of the Police shall collect the relevant evidence relating to the accident as well as computation of compensation and shall complete the investigation within 30 days.

(iv) The Investigating Officer of the Police shall file the Detailed Accident Report (DAR) with the Claims Tribunal within 30 days of the accident with a copy to the Insurance Company, claimant and Delhi Legal Services Authority.

(v) The Investigating Officer shall produce owner, driver, claimant and eye-witness before the Claims Tribunal along with the Detailed Accident Report.

(vi) The Insurance Company shall take a decision as to the quantum of compensation payable to the Claimants and submit the decision before the Claims Tribunals within 30 days of the Detailed Accident Report.

(vii) The amount assessed by the Insurance Company shall constitute a legal offer to the claimants who shall submit their response within 30 days. If the offer is acceptable to the claimants, the Tribunal shall pass a consent award and the Insurance Company shall make the payment of the award amount to the claimants within 30 days.

(viii) If the offer of the Insurance Company is not acceptable to the claimants or the Insurance Company has any defence available under law, the Claims Tribunal shall conduct an inquiry under Section 168 and 169 of the Motor Vehicles Act and shall pass an award within a period of 30 days thereafter.

4. Vide order dated 15th January, 2010, the High Court has directed that the Pilot Project shall to commence from 2nd April, 2010. In the meantime, the Committee appointed by the Court has been directed to examine cash-less treatment of the victims of the road accidents by incorporating Clause 3(3) in the Claims Tribunal Agreed Procedure which is reproduced hereunder:-

> "3(3). In case of grievous injuries suffered by a victim of the road accident who may require some surgery or shifting to some other hospital for better treatment, the Investigating Officer of the Police shall verify the existence of the Insurance policy in the first instance and shall submit the verification report and the copy of the Insurance policy along with the Report under Clause 3(2) to the Claims Tribunal within 48 hours of the accident whereupon the Claims Tribunal shall, after hearing the Insurance company and satisfying itself about the existence of the Insurance policy, direct the Insurance company to directly pay the hospitalization charges to the concerned hospital. However, this payment by the Insurance company shall be subject to the final outcome of the claim and in the event of Insurance company having legal defence available to it to avoid the liability, recovery rights in respect of such amount paid by the Insurance company shall be given by the Claims Tribunal to the Insurance company to recover the same from the driver and owner of the offending vehicle. The Claims Tribunal shall send the said order to the concerned hospital. If the Tribunal finds that the victim of the road accident needs shifting to some other hospital for better treatment then the Tribunal shall also pass appropriate order in this regard."

5. The Committee appointed by the Court has to submit its report to the High Court on 15th February, 2010.

V. SUGGESTIONS FOR AMENDMENT OF MOTOR VEHICLES ACT, 1988.

1. On 14th September, 2009, Ministry of Road Transport and Highways, Government of India constituted an Expert Committee to review the Motor Vehicles Act, 1988 in a comprehensive manner, study the corresponding law in leading Asian countries and make appropriate recommendations for the amendment in the Act. This was reported in the newspaper on 22nd September, 2009.

2. Vide order dated 25th September, 2009 in FAO No.842/2003, Delhi High Court advised the Government to examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

3. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety.

4. The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of

Road Accident Fund Commission in South Africa is available on the website, http://transport.gov.za/library/docs/raf/index.htm.

5. Vide order dated 18th November, 2009 in MAC.A.287/2008, Delhi High Court has given the following suggestions to the Government:-

(i) Strict rules regarding issuance of driving licence.

(ii) Computerized data of the driving licences issued all over the country.

(iii) Severe punishment for fake licence. (At present, no action is taken for the offenders involved in the racket of issuing fake licences. Rather the victims of the road accidents suffer because the Insurance Company avoids the liability on the ground of fake licence).

(iv) Higher punishment for drunken driving.

(v) Severe punishment for the accused who runs away from the spot after causing the accident.

(vi) Severe punishment for removing the vehicle from the spot of the accident and prohibition/punishment for the workshop who repairs the vehicle without clearance by the police.

(vii) Improvement of road condition.

(viii) Removal of unsafe vehicles from the road.

(ix) Special cell of the police to enforce the law as well as for investigation/inquiry into the accident cases.

(x) The computerization of the records of registration and insurance of the vehicles. The Insurance Policy number of all the vehicles should be duly recorded with the registration authorities so that immediately after the accident, the police can find out the Insurance Policy number and send an intimation to the Insurance Company.

VI. PROTECTION OF THE AWARD AMOUNT

1. Most of the victims of the road accident are from the lowest strata of the society and sole bread winners leaving behind large family. There

is illiteracy in the country and minor children are involved. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or even the victims being cheated. It was noted that there is no uniform system for passing directions of fixed deposit and even the direction for fixed deposit varies from 3 to 10 years and it is not clear what happens to the money thereafter. To protect the award money from being wasted, vide order dated 21st April, 2009 in the case of **Oriental Insurance Co. Ltd. vs. Man Singh**, MAC.APP.No.130/2009, Delhi High Court has directed LIC, RBI, SBI and PNB to formulate a special scheme for victims of road accident in which higher rate of interest is provided and the amount is kept in such a manner that the monthly payment to the victims of the road accident increases 10% every year to meet the inflation.

2. UCO Bank and State Bank of India have formulated special scheme for victims of road accidents on the directions of the High Court. The salient features of the scheme of UCO Bank are as under:-

(i) The fixed deposit shall be automatically renewed till the period prescribed by the Court.

(ii) The interest on the fixed deposit shall be paid monthly.

(iii) The monthly interest shall be credited automatically in the saving account of the claimant.

(iv) Original fixed deposit receipt shall be retained by the bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.

(v) The original fixed deposit receipt shall be handed over to the claimant at the end of the fixed deposit period.

(vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.

(vii) No cheque book shall be issued to the claimant without permission of the Court.

(viii) No loan, advance or withdrawal shall be allowed on the fixed

deposit without permission of the Court.

(ix) The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant, the bank shall provide the said facility.

(x) Half yearly statement of account shall be filed by the UCO Bank with the High Court/Tribunal.

(xi) UCO Bank has appointed Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi, Mobile No.09310356400 who shall co-ordinate with the High Court and the various Tribunals for opening of the Fixed Deposit and Saving Bank Account for the victims of the road accidents.

3. In MAC.APP.682/2005, it was brought to the notice of this Court that after the deposit of cheques by the Insurance Companies with the Claims Tribunal, no intimation was given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It was stated that in many cases, the cheques have also been lost. Vide judgment dated 13th January, 2010, the High Court observed that this problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals were, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the same in terms of the award and the case be kept pending till the compliance is placed on record.

4. In MAC.APP.135/2008, it was pointed out by the learned counsel for the claimants that the Claims Tribunals were passing directions for releasing part of the award amount and the remaining amount was kept in fixed deposit for a long period due to which the claimants are unable

to meet their exigencies and have to approach the Tribunal again and again for release of the award amount. It was suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education etc. Vide order dated 20th January, 2010, the High Court directed that the Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children.

5. In MAC.APP.633/2009, vide order dated 22nd February, 2010, the High Court has directed that since the FDRs have to be retained by the Bank, Bank need not prepare the FDRs. Instead, the Bank may issue the passbook of the fixed deposit account in which the fixed deposit amount as well as the interest paid are reflected and as and when the fixed deposit gets matured, the maturity amount should automatically be credited in the Saving Bank Account of the beneficiary. This will save the botheration of the bank to prepare the FDRs and it shall also save the botheration of the beneficiary to approach the bank again and again for discharge of the FDR. The effect of this modification would be that the bank will issue two passbooks to the beneficiary, one in respect of the Saving Bank Account in which the monthly interest and the maturity

amount of the fixed deposit would be credited and the other in respect of fixed deposit account.

6. The scheme formulated by the High Court shall protect the money of the victims of the road accident.

VII. ENFORCEMENT OF ORDER XXI RULE 1 OF THE CODE OF CIVIL PROCEDURE AND THE DIRECTIONS OF DELHI HIGH COURT PASSED IN THE CASE OF NEW INDIA ASSURANCE COMPANY LTD. VS. KASHIMIR LAL 2007 ACJ 688

1. Order XXI Rule 1(a) and (2) of the Code of Civil Procedure provides that the judgment debtor (Insurance company) shall give notice of deposit of the award amount to the decree-holder (claimant) either through Court or directly to the decree-holder (claimant). Order XXI Rule 1(4) of the Code of Civil Procedure provides that the interest shall cease to run from the date of service of the notice referred to in Sub-Rule (2).

2. It was pointed out to the Court that neither the Insurance Companies give any notice of deposit to the Claimants nor the Claims Tribunal give notice of deposit to the claimants as a result of which the claimants do not get the payment on time and due to delay, the Insurance companies use the money of the claimants without making payment of interest.

3. It was also noticed by the High Court that the Claims Tribunals and the Insurance Companies do not follow the directions given by Delhi High Court in the case of **New India Assurance Company Ltd. Vs. Kashimir Lal, 2007 ACJ 688.**

4. Vide order dated 27th January, 2010, the following directions have been given to the Claims Tribunals and the Insurance Companies:-

> "13. All the Claim Tribunals are directed to send a report of compliance of Order XXI Rule 1(2) and (4) of the Code of Civil Procedure within a period of two

weeks. The report be filed initially in respect of last one year. The report should contain the following particulars in tabular form:-

(i) Case title and number.
(ii) Date of award.
(iii) Award amount.
(iv) Date of deposit of cheque of the award amount.
(v) Date of notice by the Insurance company to the claimant.
(vi) Date of notice by the Claims Tribunal to the claimant.
(vii) Date of release of the cheque towards the award amount to the claimant.
(viii) Period for which the claimant is entitled to interest under Order XXI Rule 1(4), CPC.
(ix) Amount of interest to which the claimant is entitled under Order XXI Rule 1(4), CPC.
(x) Amount of the interest actually awarded to the claimant under Order XXI Rule 1(4), CPC.

14. The Report should also indicate as to how many cheques are presently deposited with the Claims Tribunals for being released to the claimants, how many cheques have expired and whether any cheques have been lost.

15. A separate report should indicate the format in which the Nazirs are maintaining the record; to consider whether it enables convenient access to the relevant information. Further, if there be room for improvement, the Claims Tribunals may indicate a possible revised format.

16. The Claims Tribunals are also directed to submit a report whether the Insurance companies have furnished the details of the bank account and the bank in all pending cases in terms of the judgment dated 9th December, 2005 of this Court in the case of **New India Assurance Co. Ltd.** (supra). The number of cases in which such details have been furnished and the number of cases in which such details have not been furnished be mentioned in the report. The list of cases in which the recovery of the award amount and the cost of Rs.5,000/- has been effected by attachment of Bank account during last one year in terms of the directions of this Court be also furnished.

17. The Report of all the Claims Tribunals be submitted before the Registrar (Vigilance) of this Court within two weeks. The Registrar (Vigilance) shall also examine the records maintained by the Nazirs of all the Claims Tribunals. The Claims Tribunals shall direct their Nazirs to produce the records maintained by them before the Registrar (Vigilance), who shall submit a report to this Court as to whether the records are being properly maintained. The Registrar (Vigilance) may also suggest measures for due implementation of the aforesaid provisions of law and the directions of this Court.

18. All the Insurance companies are directed to file the affidavit of compliance of Order XXI Rule 1 of the Code of Civil Procedure as well as the directions dated 9th July, 1997 passed by this Court. The affidavit shall initially contain the data for the last one year. The affidavit shall contain the following particulars in tabular form:-

(i) Case title and number.
(ii) Date of award.
(iii) Award amount.
(iv) Date of deposit of the award amount.
(v) Date of notice of deposit under Order XXI Rule 1(2) of the Code of Civil Procedure.
(vi) Date of clearance of the cheque of the award amount by the Bank.
(vii) Amount of interest payable under Order XXI Rule 1(4) of the Code of Civil Procedure (If no notice was given, the interest be calculated from the date of cheque up to the date of clearance of the cheque).
(viii) Amount of interest actually paid.

19. The affidavit shall also state whether the bank account number and the name of the Bank has been furnished in all pending cases to the Claims Tribunals in terms of directions of this Court. The affidavit be filed by all the Insurance companies within two weeks. The responsible officer of all the Insurance companies shall remain present in the Court on the next date of hearing along with all the relevant records."

5. On 23rd February, 2010, the High Court passed the following interim directions:-

(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be

retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

(v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688**.

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

a) Date of award
b) Case number
c) Title of the case
d) Award amount
e) Date of deposit of the award amount
f) Date of notice of deposit by the depositor.
g) Date of notice of deposit by the Tribunal.
h) Amount of interest upto date of notice of deposit.
i) Whether award amount and complete interest deposited.
j) Balance outstanding interest.
k) Remarks (Action taken to recover the balance interest)

(vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

(viii) In respect of pending cheques, the Claims Tribunal

shall forthwith issue the notice of deposit to the claimants as well as their counsels.

(ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days."

VIII. DELHI MOTOR ACCIDENT CLAIMS TRIBUNAL RULES, 2008

1. In the case of **Sarika Vs. Narain Singh, FAO 492/1999,** it came to the notice of Delhi High Court that Delhi Motor Accident Claims Tribunal Rules were drafted in March, 1999 and the Draft Rules were published on 16th August, 2001 inviting objections from the public but despite a lapse of more than eight years, the Rules have not yet been notified. Notice was, therefore, issued to Government of NCT of Delhi on 19th May, 2009 in response to which it was informed to the High Court that the Draft Rules were again published in Delhi Gazette on 3rd September, 2008 and the same are pending for approval before the Cabinet of Government of NCT of Delhi.

2. Vide order dated 22nd June, 2009, Government of NCT of Delhi was advised to expedite the consideration of the said Rules and some suggestions were given by the High Court to be incorporated in the Draft Rules.

3. On 13th July, 2009, Government of NCT of Delhi has notified Delhi Motor Accidents Claims Tribunal Rules, 2008.

4. Delhi Motor Accident Claims Tribunal Rules, 2008 have very benevolent provisions. Some of the important provisions are that an uninsured vehicle cannot be released on superdari by any Court unless the owner of the offending vehicle gives sufficient security to satisfy the award that may be passed by the claims Tribunals. On the expiry of three months of the seizure, the Magistrate shall auction the offending vehicle and send the amount received in auction to the Claims Tribunal to be adjusted in the award amount. The Rules also define the duties of the Police Officers, Registering Authority. Under the new Rules awards of

the Claims Tribunals can be adjudicated like a decree of the Civil Court and the Claims Tribunals are vested with all the powers of the civil Courts. The reports submitted by the Investigating Officer, Registering Authority and the confirmation by the Insurance companies are presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.

5. The new Rules shall cut down the delays in the trial of Motor Accident Claim cases.

6. Vide order dated 5th November, 2009, the High Court has given suggestion to the Expert Committee appointed by the Ministry of Road Transport and Highways to consider inclusion of provisions of Delhi Motor Accidents Claims Tribunal Rules, 2008 in the Central Rules.

IX. SCOPE OF SECTIONS 168 AND 169 OF THE MOTOR VEHICLES ACT, 1988.

Section 168 of the Motor Vehicles Act provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunals shall follow such summary procedure as it thinks fit. However, it has been noticed that the Tribunals have not been conducting any inquiry but were conducting a normal civil trial due to which the disposal of the claim petition was getting unduly delayed. Vide order dated 22nd May, 2009 in the case of **Somari Devi Vs. Ragwar Singh, FAO No.884/2003,** the directions have been issued by Delhi High Court to the Tribunals to conduct an inquiry into the claim petition instead of a protected civil trial.

X. ENFORCEMENT OF SECTION 196 OF THE MOTOR VEHICLES ACT, 1988 FOR PROSECUTION OF OWNER/DRIVER OF UNINSURED VEHICLES.

Section 196 of the Motor Vehicles Act provides for imprisonment upto three months or fine upto Rs.5,000/- or both for the driver and owner of

the uninsured vehicles. Delhi Police has not been prosecuting the owners and drivers of uninsured vehicles under Section 196 of the Motor Vehicles Act. The Delhi High Court issued Show Cause Notice to the Commissioner of Police on 19th August, 2009 in MAC.APP.347/2009 in pursuance to which the Delhi Police has regretted the lapse in not implementing Section 196 of the Motor Vehicles Act and has issued a Standing Order No.157/2009 for adding Section 196 of the Motor Vehicles Act in all pending investigations and for filing of supplementary challans in the cases pending trial in respect of uninsured vehicles. By invoking Section 196 of the Motor Vehicles Act, the owners of many uninsured vehicles have paid the claim amount to the claimants.

XI. PROSECUTION OF OFFENDERS HOLDING FAKE DRIVING LICENCE AS WELL AS PERSONS INVOLVED IN FABRICATING/FORGING FAKE DRIVING LICENCE.

1. There are large number cases relating to fake driving licences and no action is taken against the fake driving licence holders as well as persons who fabricate/forge fake driving licences. Forging and holding a fake driving is a serious offence and the person holding a fake driving licence is a danger to the society inasmuch as he is not legally entitled to drive the motor vehicle and may not be knowing driving at all or his driving licence may have been suspended for involvement in some accident. The persons holding fake driving licence are liable to be prosecuted under law but they drive freely on road. The fake driving licence holders should not be permitted to drive on the road.

2. Vide judgment dated 3rd December, 2009 in MAC.APP.236/2009, Delhi High Court has constituted a Committee to draw up a mechanism for prosecution of fake driving licence holders/forgers under Sections 465, 468, 471 and 474 of the Indian Penal Code and to make Delhi roads safe by ensuring that the fake driving licence holders do not drive freely on Delhi roads any more.

3. The Committee constituted by Delhi High Court held its meeting on 14th December, 2009 and submitted its report before the High Court on 23rd December, 2009.

4. Based upon the report of the Committee, the High Court passed the following directions on 23rd December, 2009:-

(i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence cases.

(ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1st January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3rd December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID acp-scrb-dl@nic.in. along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the authorized officer of the Insurance Company.

(iii) The Delhi Police shall take the following action in respect of the aforesaid complaints:-

(a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station.

(b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect.

(c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station.

(iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police.

(v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance

Companies or other sources.

(vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered in the entry against the information received.

(vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper.

(viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State.

5. Delhi Police shall launch a special drive to book the persons who fake the driving licences.

6. All the Insurance Companies have been directed to put the aforesaid directions to immediate compliance insofar as fresh cases of driving licences are concerned. All the Insurance Companies have also been directed to compile the data relating to the fake driving licences in respect of the accidents during the last three years and to make the complaint to Delhi Police within a period of four weeks.

XII. JUDGMENT ON THE DOCTRINE OF SOVEREIGN IMMUNITY

Air Force Truck killed a person in a motor accident on 22nd May, 2009. The Tribunal awarded a sum of Rs.4,74,488/- against which the Air Force filed the appeal before the High Court raising the plea of sovereign immunity.

The law with respect to sovereign immunity is well-settled by the Hon'ble Supreme Court in various judgments. The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such

law but no law has been enacted till now. The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The Hon'ble Supreme Court in the case of Pushpa Thakur v. Union, 1984 ACJ 559, has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned.

If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.

Vide order dated 12th November, 2009 in MAC.APP.284/2008, Delhi High Court has directed the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.

XIII. LIABILITY OF THE INSURANCE COMPANY IN RESPECT OF A PILLION RIDER ON A TWO-WHEELER AND OCCUPANTS IN A PRIVATE CAR UNDER COMPREHENSIVE/PACKAGE POLICY.

A comprehensive/package insurance policy covers the occupants in a private car and a pillion rider on a two-wheeler and there is a specific clause in the insurance policies in this regard. Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) are the statutory authorities to regulate the tariff and terms and conditions of the insurance policies and there are directions of both these authorities to cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.

Despite the clause in the policy and the directions of the TAC and IRDA, the insurance companies do not accept their liability and litigation in this regard is pending in various Courts all over the country.

In MAC.APP.176/2009, Delhi High Court examined the officers of United India Insurance Co. Ltd. as well as TAC and IRDA under Section 165 of the Indian Evidence Act. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16.11.2009, IRDA issued fresh circular reiterating the factual position. IRDA thereafter convened a meeting dated 26th November, 2009 of all the 17 Insurance Companies who after deliberations, admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies agreed to comply with the Circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals

pending before the High Courts have been agreed to be identified by the Insurance Companies within two weeks and the withdrawal to be done within four weeks thereafter.

The High Court held that where the vehicle is covered under a comprehensive/package policy, there is no need for a Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In view of the Tariff Advisory Committee's directives and those of the Insurance Regulatory Development Authority, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the case before it. All the Motor Accident Claims Tribunals functioning in Delhi have been directed to take note and ensure that no such plea is allowed to be put forward by any insurance company.

It is also hoped that large number of pending cases all over the country shall come to an end, and the claimants who have been denied compensation on this ground, shall ultimately get the compensation legitimately due to them.

XIV. RIGHT OF LEGAL REPRESENTATIVES TO CLAIM COMPENSATION AFTER THE DEATH OF THE INJURED

The accident dated 27th May, 2002 resulted in grievous injuries to the claimant, who filed the claim petition before the Tribunal. The claimant died during the pendency of the petition whereupon his legal representatives were substituted and an award was passed. The Insurance company challenged the award on the ground that the claim petition abated on death of the claimant and the right to sue did not survive in favour of the legal representatives.

The Law Commission in its 178th Report has recommended the amendment to Section 306 of the Indian Succession Act, 1925 as well as

Section 166 of the Motor Vehicles Act, 1988 to provide for initiation/continuation of proceedings by the legal representatives of the injured person upon his death. The Law Commission has referred to Full Bench judgment of Karnataka High Court in the case of Kannamma Vs. Dy. General Manager, ILR 1990 Karn. 4300 (FB) in which the Full Bench recommended that the provisions of Section 306 of the Indian Succession Act, 1925 and of Section 110A of the Motor Vehicles Act, 1939 be amended so as to permit the survival of the right of the injured person to seek compensation to his legal representatives, irrespective of whether the cause of death was relatable to the accident or not. In the subsequent, Single Bench judgment of Karnataka High Court in the case of Baburao Sataba Manabutaker vs. Doreswamy (MFA 4072/1998 dated 4.9.2001) lamented delay in amending the law and pointed out that the delay in amendment is causing grave injustice.

The Government is still to act on the recommendation of 178th Report of Law Commission and the position continues as it is which is causing grave injustice to the victims of the road accident.

Since the Government has now appointed a Committee to review the entire Motor Vehicles Act, vide order dated 4th November, 2009 in MAC APP.432/2009, the copy of this order has been directed to be sent to the Secretary, Ministry of Road Transport and Highways and to Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to consider the recommendations of the Law Commission.

XV. INSURANCE COMPANIES CANNOT DEDUCT TDS UNDER SECTION 194-A OF THE INCOME TAX ACT FROM THE INTEREST ON THE AWARD AMOUNT DEPOSITED UNDER AN INTERIM ORDER OF THE COURT.

It came to the notice of Delhi High Court that the Insurance Companies had been deducting TDS from the interest on award amount directed to

be deposited by an interim order pending final determination of the appeals. After deduction, the TDS certificate is issued in the name of the Registrar General of the Court. The claimants cannot get the refund/adjustment of the TDS deducted and they suffer loss of TDS amount to that extent.

Vide judgment dated 26th March, 2009 in MAC.APP.596/2008, Delhi High Court held that the deposit of award amount including interest with the Court under interim direction of the Court pending final determination of the appeal is only an inchoate right and, therefore, Section 194-A of the Income Tax Act does not apply and no TDS can be deducted.

XVI. SCOPE OF SECTION 165 OF THE INDIAN EVIDENCE ACT, 1872.

Section 165 of the Indian Evidence Act empowers the Judge to ask any question, in any form, at any time, of any witness or of parties, about any fact, relevant or irrelevant and may order production of any document or thing. The object of Section 165 of the Indian Evidence Act is that the Judge is not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter and question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

Vide order dated 22nd May, 2009 in the case of **Somari Devi Vs. Ragwar Singh, FAO No.884/2003**, the Delhi High Court has laid down the scope of Section 165 of the Indian Evidence Act. This judgment shall help in expeditious disposal of the cases. By examining the parties and the witnesses, the Judge can reach the truth and cut short the delay.

XVII. SCOPE OF SECTION 167 OF THE INDIAN EVIDENCE ACT, 1872.

Improper admission or rejection of evidence is not by itself a ground for reversal of a decision, if there is other evidence to support it. Where admissible evidence has been improperly rejected or inadmissible

evidence has been admitted by the Judge, such improper reception or rejection of evidence shall not of itself be a ground for new trial or reversal of any decision in any case, unless substantial wrong or miscarriage of justice has been thereby occasioned; or, in other words, if the Court considers that after leaving aside the evidence that has been improperly admitted, there was enough evidence on the record to justify the decision of the lower court, or that if the rejected evidence were admitted the decision ought not have been affected thereby, no Court of appeal should set it aside.

The Appellate Court can effectively decide the appeal following Section 167 of the Indian Evidence Act. Scope of Section 167 of the Indian Evidence Act has been laid down in judgment dated 21st May, 2009 in the case of **New India Assurance Co. Ltd. vs. Col. Surinder Pal, MAC APP. NO.158/2007.**

XVIII. STEPS TO CURB DELAY AND REPEATED ADJOURNMENTS FOR SERVICE OF RESPONDENTS

1. In the appeals filed by the Insurance Companies, the stay is granted subject to deposit the entire award amount along with interest within 30 days and notice is issued to the claimants and date is fixed after about 45 days so that the appropriate order for disbursement of the award can be passed on the next date. However, invariably the appellants fail to file the process fee and, therefore, the case gets adjourned. At times, there are repeated failures on the part of the Insurance Companies to file the process fee as a result of which the claimants do not become aware of the deposit made in the High Court and grave injustice is caused to them.

2. Delhi High Court has passed an order in MAC.APP. No.405/2009 to the effect that if the appellant fails to take steps for service of the respondents within one week or the process fee is filed but returned under objections and objections are not removed within three days, the

Registry shall issue court notice to the respondents by ordinary process as well as registered AD and in that event, Rs.5,000/- shall be deposited as cost by the appellant before the next date and upon failure to deposit the cost before the next date, same shall be deducted out of the statutory amount of Rs.25,000/- deposited by the appellant with the appeal under Section 173 of the Motor Vehicles Act.

3. The aforesaid order shall serve the following purposes:-

(i) The date of service shall not be wasted because of the default of the appellant to take steps for service.

(ii) The Judicial time wasted to attend the default hearings shall be saved.

(iii) There are some cases where the appellant deliberately does not take steps to delay the proceedings. The appellant cannot now succeed in delaying the case.

(iv) Injustice to the claimants due to failure of the appellant to take steps and delay of the appeal would be avoided.

(v) The pre-emptory order of imposing cost would act as a deterrent to the counsels and the discipline would improve.

(vi) The funds collected by way of cost for default can be put to a benevolent use.

XIX. SETTLEMENT OF PENDING DEATH CASES ACCORDING TO THE SCHEDULE ACCEPTED BY THE INSURANCE COMPANIES

1. On 29th May, 2009, all the four nationalized insurance companies, namely, New India Assurance Company Limited, Oriental Insurance Company Limited, National Insurance Company Limited and United India Insurance Company Limited agreed to settle all the pending death cases in Delhi according to the principles laid down by the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** decided on 15th April, 2009 with a slight reduction of multiplier by 2. The nationalized Insurance companies have also agreed to pay interest at the rate of 5% per annum.

The schedule agreed to by all the nationalized companies for settlement of pending death cases is as under:-

1 . MULTIPLIER

Age of the deceased (in years)	Multiplier
15 – 25	16
26 – 30	15
31 – 35	14
36 – 40	13
41 – 45	12
46 – 50	11
51 – 55	9
56 – 60	7
61 – 65	5
Above 65	3

2. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

- **Deceased – unmarried**

(i) Deduction towards personal expenses. : 1/2 (50%)

(ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

- **Deceased – married**

(i) 2 to 3 dependent family members. : 1/3rd deduction towards personal expenses.

(ii) 4 to 6 dependent family members. : 1/4th deduction towards personal expenses.

(iii) More than 6 family members : 1/5th deduction towards personal expenses.

3. FUTURE PROSPECTS

(i) Below 40 years of age : Actual salary + 50% towards future prospects.

(ii) Between 40-50 years : Actual salary + 30% towards future prospects.

(iii) More than 50 years job : Actual salary only. No addition for future prospects.

(iv) Wages not sufficiently proved : Minimum wages + 50% towards inflation and price index.

4. NON-PECUNIARY DAMAGES

(i)	Compensation for loss of estate	:	Rs.5,000/- to Rs.10,000/-
(ii)	Compensation for loss of consortium	:	Rs.5,000/- to Rs.10,000/-
(iii)	Compensation for loss of love and affection	:	Rs.5,000/- to Rs.10,000/-
(iv)	Funeral expenses, cost of transportation of body and medical expenses	:	Actual

5. RATE OF INTEREST

Rate of interest : 5.0%

XX. PROPOSED ACTION PLAN FOR EXPEDITIOUS DISPOSAL OF MOTOR ACCIDENT CASES:-

The following plan for disposal of motor accident claim cases prepared by Justice J.R. Midha for expeditious disposal of motor accident cases was circulated by the Ministry of Law & Justice in the Conference on "The

National Consultation for Strengthening the Judiciary towards reducing the Pendency and Delays" on 24th October, 2009:-

"I. <u>FRESH ACCIDENT CASES</u>

★ The Police is the first agency to take cognizance of a motor accident and it has the entire evidence required for initiating the proceedings for compensation.

★ The Police shall file an Accident Information Report under Section 158(6) of the Motor Vehicles Act before the Claims Tribunal along with all the relevant documents required by the insurance company to settle the claim.

★ The Police shall also produce the owner, driver, eye-witness and claimants before the Claims Tribunal.

★ The Police shall simultaneously serve the copy of the Accident Information Report on the Insurance Company.

★ The Tribunal shall treat the Accident Information Report of the Police as a claim petition under Section 166(4) of the Motor Vehicles Act.

★ The Tribunal shall conduct an inquiry under Section 168 of the Motor Vehicles Act and shall pass an award after recording the statement of the claimants, driver, owner and eye-witness.

★ Delhi Police has started the above system after the notice of contempt issued by the Delhi High Court for failure to comply with Section 158(6) of the Motor Vehicles Act for the last 15 years.

★ This system shall save the time lost in service of the owner, driver and eye-witness and the collection of relevant documents for passing the award.

★ By this system, a claim petition can be decided in 2-3 months time with 2-3 hearings against normal 50-100 hearings spread over 5-10 years.

II. <u>DISPOSAL OF ARREARS OF PENDING MACT CASES</u>

★ Large number of cases are pending for service of driver, owner and eye-witness of the offending vehicle. The Police be directed to produce them before the Claims Tribunal.

★ As per the Procedural Manual of Nationalized Insurance Companies for Motor Claims, the Insurance Company has to appoint an investigator immediately upon the receipt of the intimation of claim and upon receipt of the report of the Investigator, the Company has to compute the compensation in accordance with law and has to offer the same to the claimant. However, in actual practice, the Insurance company appoints an investigator, compute the compensation and make a provision of liability in their accounts but do not offer the compensation to the claimant and vehemently contest the claim petition before the Tribunal. The Insurance Companies be directed to appoint an officer in each case who shall be responsible for processing and settlement of each case according to their Procedural Manual. The admitted amount along with the computation and the investigator's report be filed by the Insurance company in all pending cases.

★ Where the service is complete, the death cases can be disposed of according to the attached Schedule agreed to by the Insurance Companies (The Schedule is based on the law settled by the Hon'ble Supreme Court with a slight reduction of multiplier by two and interest at the rate of 5%).

III. NEED FOR NEW LAW

★ More than one lakh people die in road accident a year, meaning thereby that one person die every ten minutes. A large number of cases are hit and run where the particulars of the offending vehicles are not traceable. A large number of vehicles are uninsured and the victims do not get any compensation in those cases. Even in the case of insured vehicles, the insurance companies do not have any attitude to process and settle the claim and they wait for the award of the Tribunal. Most of the victims of the road accident are sole bread winners from the poorest strata of the society and their

family starve after the death of the victim. The Insurance companies vehemently fight the cases. The version of the Insurance companies is that the claim-premium ratio is 400% i.e. they are paying Rs.400 towards claim against Rs.100 as premium in motor insurance.

★ The road users have a fundamental right to life and liberty which shall include the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user arising out of permitting the use of motor vehicles on the roads.

★ South African Model is best suited for our country which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

★ The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety.

★ The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, http://www.transport.gov.za/library/docs/raf/index.htm.

★ Delhi High Court has passed an order dated 25th September, 2009 advising the Government to examine the South African Law."

JUSTICE J.R. MIDHA

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SUMMARY OF IMPORTANT JUDGMENTS/ORDERS
OF DELHI HIGH COURT
AND THE EFFECT OF THEIR IMPLEMENTATION

S. No.	*Judgments/Orders passed by Delhi High Court*	*Effect of implementation of the said order*
(1)	(2)	(3)
I.	**<u>Enforcement of Section 158(6) of the Motor Vehicles Act, 1988 – Directions issued by Delhi High Court in the case of Rajesh Tyagi Vs. Jaibir Singh, FAO 842/2003 vide orders dated 08.6.2009 and 5.11.2009.</u>** ♦ Section 158(6) of the Motor Vehicles Act was incorporated in 1994 and it provides that the SHO of the Police Station shall send Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR and a copy to the concerned Insurance Company. The object of Section 158 (6) of the Motor Vehicles Act is that the police is the first agency to take cognizance of the accident and it has the entire evidence required for initiating the proceedings for compensation. ♦ Direction has been given to Delhi Police to submit the Accident Information Report under Section 158(6) of the Motor Vehicles Act with the Claims Tribunals within 30 days of the accident along with attested copy of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit, fitness certificate, MLC and post-mortem report. ♦ Police has also been directed to give the copy of the Accident Information Report along with aforesaid documents to the insurance companies. ♦ Delhi Police has started following initiatives to implement Section 158(6) of the Motor Vehicles Act:- (i) Delhi Police has started a website (www.dpacciclaim.in) in which all relevant information/documents are placed which can be downloaded by the claimants, Insurance Companies as well as Tribunals. (ii) Registers to be maintained at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned MACT, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register. (iii) Delivery of FIR to the Claims Tribunals on the date of registration. (iv) Entries in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).	The directions given to the police will expedite the settlement of claim by the insurance companies and the payment of compensation to the victims of road accidents.

(v) Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.

(vi) ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) to the learned MACT, owner and insurer of the offending vehicle and the victim/his or her family.

(vii) MACT Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.

(viii) Monthly meeting of ACsP, PG Cell, In-charge of MACT Monitoring Cells with the Claims Tribunals.

(ix) Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.

(x) Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.

(xi) Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.

(xii) Installation of checklist boards in SHOs rooms.

(xiii) Establishment of District Cells as pilot project in three districts.

♦ The Delhi High Court has passed following directions to Delhi Police on 8th June, 2009:-

"(i) In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

"14. In case of death: Names and address of the next of kin of the deceased.
15. In case of injury: Nature of injuries suffered
16. Names and addresses of the eye-witnesses.
17. In case of transport vehicles:
(i) Particulars of the permit.
(ii) Particulars of the fitness certificate".

(ii) The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the offending vehicle. MLC and Post - mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.

(iii) Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents.

	♦ **Directions to Delhi Police regarding pending cases for the period between 1994-2009** Delhi Police has started compliance of Section 158(6) of the Motor Vehicles Act w.e.f. 8th June, 2009 after the order of this Court. However, there has been no compliance during the period 14th November 1994 up to 7th June, 2009 which has caused grave prejudice to the victims of the road accident. The Delhi High Court has issued following directions to the Delhi Police on 5th November, 2009 with respect to the pending cases:- (i) The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14th November, 1994. (ii) The Delhi Police shall collect the list of all pending cases filed after 14th November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal. (iii) The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal. (iv) The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/post mortem report, site plan, driving licence, registration cover, Insurance policy, fitness, permit, etc. at the time of hearing of the cases before the Claims Tribunal. (v) The Delhi Police has already deputed a Naib Court with every Claims Tribunal. The Naib Court shall remain present at the time of hearing of all the cases and the Claims Tribunal shall pass the appropriate order for filing of the report under Section 158(6), service of the owner, driver and eye-witness or production of documents as the case may be. The copy of such orders shall be given dasti to Naib Court whereupon the Naib Court shall note down the next date of hearing of the cases, coordinate with the concerned Police Stations and provide the status report of those cases to the Court on the next date of hearing. The compliance of this order shall be done by Delhi Police in a phased manner. (vi) In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACsP in terms of order dated 8th June, 2009.	
II.	**Enforcement of Section 166(4) of the Motor Vehicles Act, 1988 – Directions issued by Delhi High Court in the case of**	

	<u>Rajesh Tyagi Vs. Jaibir Singh, FAO 842/2003 – vide order dated 08.6.2009.</u> ♦ Section 166 (4) of the Motor Vehicles Act was also incorporated in 1994 and it provides that the Claims Tribunal shall treat the Accident Information Report (AIR) under Section 158(6) as a claim petition. The object of Section 166(4) of the Motor Vehicles Act is that poor and helpless victims of the road accident may be ignorant of their rights and, therefore, the cognizance of the claim for compensation be taken by the Claims Tribunal directly on the basis of the Accident Information Report of the police without the requirement of a separate claim petition to be filed by the claimant. However, this provision was not being enforced as the police was not filing the Accident Information Report with the Claims Tribunal. With the undertaking of the police and the directions of the High Court to the police to strictly enforce Section 158(6) of the Motor Vehicles Act, the Delhi High Court has given following directions to the Motor Accident Claim Tribunals on 8th June, 2009 for enforcement of Section 166(4) of the Motor Vehicles Act:- "(i) Maintenance of a register for recording of the FIR which shall be received daily from the police stations. The Accident Information Report and private claim petition filed in respect of an FIR be marked in this register. (ii) Maintenance of a separate institution register for registering the AIR as miscellaneous application. (iii) Listing of AIR on the judicial side and issuance of notice to the claimant, owner, driver and Insurance Company. (iv) Notice to the claimant, owner and driver be served through the Investigating Officer. (v) Notice of Insurance Company be served through the nominated counsel of each company. (vi) AIR be listed as a separate category in the cause list as miscellaneous application. (vii) After appearance of the claimant, the AIR be registered as a claim petition. (viii) If the claimant has filed a separate claim petition, the AIR be tagged with the claim petition."	All the Motor Accident Claims Tribunals have set up the aforesaid system for compliance of Section 166(4) of the Motor Vehicles Act, 1988. The net effect of aforesaid directions is that the Delhi Police is filing Accident Information Report along with the relevant documents including driving licence, registration cover, insurance policy, fitness and permit of the offending vehicle, before the Tribunal within 30 days of the accident. Simultaneously, the Investigating Officer is also producing the owner, driver, eye-witness and the claimants before the claims Tribunal. Insurance Companies are already represented through their retainers and the Claims Tribunals straight away proceed to record the statements of all concerned, verify the documents and pass an award. 25 cases of accident have been settled by the Claims Tribunals from 1st July, 2009 to 20th July, 2009 on the basis of the AIR filed by Delhi Police.
III.	**<u>Directions to Insurance companies in the case of Rajesh Tyagi Vs. Jaibir Singh, FAO 842/2003 – Orders dated 08.6.2009 and 5.11.2009</u>** ♦ The Insurance Companies have not been settling the claims of the victims of the road accident on the ground that they have no	

	notice/intimation of the road accident until the receipt of the notice from the Claims Tribunal. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim. ♦ The Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days wherever the accident, driving licence, permit, evidence and other documents relate to Delhi and within 90 days where the documents relate to outside Delhi. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the Insurance Companies have been directed to deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal. ♦ In order to streamline the system, it is directed that henceforth immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award. ♦ With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies are directed to appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned order in writing about the amount payable in accordance with law. The order of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the order of the designated officer.	The victims of the road accident shall get the compensation without any delay with the deposit of the admitted amount by the Insurance Company.
IV.	**<u>Special Scheme for Settlement of Motor Accident Claims within 120 days in respect of accidents during 15.1.2010 to 14.7.2010.</u>** ♦ Vide order dated 5th November, 2009 in MAC.APP.236/2009 & 238/2009, Delhi High Court constituted a Committee comprising of Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law & Justice and Company Affairs; and Joint Commissioner of Delhi Police. The Committee consulted all the 17 Insurance Companies and with their	The victims of the road accident shall get compensation within 120 days of the

	consent, prepared Claims Tribunal Agreed Procedure which was approved by Delhi High Court. ♦ Delhi Police agreed to implement the said procedure on trial basis as a pilot project for a period of six months. ♦ The salient features of the Claims Tribunal Agreed Procedure approved by the Delhi High Court are as under:- (i) The Investigating Officer of the Police shall intimate the accident to the Claims Tribunal within 48 hours of the accident. The particulars of the accident shall be uploaded on the website of the Delhi Police and the intimation shall also be given to the Insurance Companies. (ii) The Insurance Company shall appoint a designated officer who shall be responsible for dealing/processing of that case. (iii) The investigating officer of the Police shall collect the relevant evidence relating to the accident as well as computation of compensation and shall complete the investigation within 30 days. (iv) The Investigating Officer of the Police shall file the Detailed Accident Report (DAR) with the Claims Tribunal within 30 days of the accident with a copy to the Insurance Company, claimant and Delhi Legal Services Authority. (v) The Investigating Officer shall produce owner, driver, claimant and eye-witness before the Claims Tribunal along with the Detailed Accident Report. (vi) The Insurance Company shall take a decision as to the quantum of compensation payable to the Claimants and submit the decision before the Claims Tribunals within 30 days of the Detailed Accident Report. (vii) The amount assessed by the Insurance Company shall constitute a legal offer to the claimants who shall submit their response within 30 days. If the offer is acceptable to the claimants, the Tribunal shall pass a consent award and the Insurance Company shall make the payment of the award amount to the claimants within 30 days. (viii) If the offer of the Insurance Company is not acceptable to the claimants or the Insurance Company has any defence available under law, the Claims Tribunal shall conduct an inquiry under Section 168 and 169 of the Motor Vehicles Act and shall pass an award within a period of 30 days thereafter.	accident under the Special Scheme.

	♦ Vide order dated 15th January, 2010, the High Court has directed that the Pilot Project shall commence from 2nd April, 2010. In the meantime, the Committee appointed by the Court has been directed to examine cashless treatment of the victims of the road accidents by incorporating Clause 3(3) in the Claims Tribunal Agreed Procedure which is reproduced hereunder:- "3(3). In case of grievous injuries suffered by a victim of the road accident who may require some surgery or shifting to some other hospital for better treatment, the Investigating Officer of the Police shall verify the existence of the Insurance policy in the first instance and shall submit the verification report and the copy of the Insurance policy along with the Report under Clause 3(2) to the Claims Tribunal within 48 hours of the accident whereupon the Claims Tribunal shall, after hearing the Insurance company and satisfying itself about the existence of the Insurance policy, direct the Insurance company to directly pay the hospitalization charges to the concerned hospital. However, this payment by the Insurance company shall be subject to the final outcome of the claim and in the event of Insurance company having legal defence available to it to avoid the liability, recovery rights in respect of such amount paid by the Insurance company shall be given by the Claims Tribunal to the Insurance company to recover the same from the driver and owner of the offending vehicle. The Claims Tribunal shall send the said order to the concerned hospital. If the Tribunal finds that the victim of the road accident needs shifting to some other hospital for better treatment then the Tribunal shall also pass appropriate order in this regard." ♦ The Committee appointed by the Court has to submit its report to the High Court on 15th February, 2010.	
V.	**<u>Suggestions for Amendment of Motor Vehicles Act, 1988.</u>** ♦ On 14th September, 2009, Ministry of Road Transport and Highways, Government of India constituted an Expert Committee to review the Motor Vehicles Act, 1988 in a comprehensive manner, study the corresponding law in leading Asian countries and make appropriate recommendations for the amendment in the Act. This was reported in the newspaper on 22nd September, 2009. ♦ Vide order dated 25th September, 2009 in FAO No.842/2003, Delhi High Court advised the Government to examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The	The Expert Committee appointed by the Ministry of Road Transport and Highways is considering the suggestions of the High Court.

	Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety. The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, http://transport.gov.za/library/docs/raf/index.htm. ♦ Vide order dated 18th November, 2009 in MAC.APP.287/2008, the Delhi High Court has given the following suggestions to the Government:- (i) Strict rules regarding issuance of driving licence. (ii) Computerization of the driving licences and issuing all over the country. (iii) Severe punishment for fake licence. (At present, no action is taken for the offenders involved in the racket of issuing fake licences. Rather the victims of the road accidents suffer because the Insurance Company avoids the liability on the ground of fake licence). (iv) Higher punishment for drunken driving. (v) Separate punishment for the accused who runs away from the spot after causing the accident. (vi) Separate punishment for removing the vehicle from the spot of the accident and prohibition/punishment for the workshop who repairs the vehicle without clearance by the police. (vii) Improvement of road condition. (viii) Removal of unsafe vehicles from the road. (ix) Special cell of the police to enforce the law as well as for investigation/inquiry into the accident cases. (x) The computerization of the records of registration and insurance of the vehicles. The Insurance Policy number of all the vehicles should be duly recorded with the registration authorities so that immediately after the accident, the police can find out the Insurance Policy number and send an intimation to the Insurance Company.	
VI.	**<u>Protection of the Award amount.</u>** ♦ To protect the award money from being wasted, vide order dated 21st April, 2009 in MAC.APP.No.130/2009, Delhi High Court has directed LIC, RBI, SBI and PNB to formulate a special scheme for victims of road accident in which higher rate of interest is provided and the amount is kept in such a manner that the monthly payment to the victims of the road accident increases 10% every year to meet the inflation.	Most of the victims of the road accident are from the lowest strata of the society and sole bread winners leaving behind large family. There is illiteracy in the

	♦ UCO Bank and State Bank of India have formulated a special scheme for victims of road accidents on the directions of the High Court. The salient features of the scheme of UCO Bank are as under:- (i) The fixed deposit shall be automatically renewed till the period prescribed by the Court. (ii) The interest on the fixed deposit shall be paid monthly. (iii) The monthly interest shall be credited automatically in the saving account of the claimant. (iv) Original fixed deposit receipt shall be retained by the bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR. (v) The original fixed deposit receipt shall be handed over to the claimant at the end of the fixed deposit period. (vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant. (vii) No cheque book shall be issued to the claimant without permission of the Court. (viii) No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the Court. (ix) The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant, the bank shall provide the said facility. (x) Half yearly statement of account shall be filed by the UCO Bank with the High Court/Tribunal. (xi) UCO Bank has appointed Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi, Mobile No. 09310356400 who shall co-ordinate with the High Court and the various Tribunals for opening of the Fixed Deposit and Saving Bank Account for the victims of the road accidents. ♦ In MAC.APP.682/2005, it was brought to the notice of this Court that after the deposit of cheques by the Insurance Companies with the Claims Tribunal, no intimation was given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It was stated that in many cases, the cheques have also been lost. Vide judgment dated 13th January, 2010, the High Court observed that this problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals were, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the same in terms of the award and the case be kept pending till the compliance is placed on record. ♦ In MAC.APP.135/2008, it was pointed out by the learned counsel for the claimants that the Claims Tribunals were passing directions for releasing part of the award amount and the remaining amount was kept in fixed deposit for a long period due to which the claimants are unable to meet their exigencies and have to approach the Tribunal again and again for release of the award amount. It was	country and minor children are involved. The legal representatives of the deceased have no knowledge of investment and saving. There is a danger of the money being wasted or even the victims being cheated. It was noted that there is no uniform system for passing directions of fixed deposit and even the direction for fixed deposit varies from 3 to 10 years and it is not clear what happens to the money thereafter. The scheme formulated by this Court shall protect the money of the victims of the road accident.

	suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education etc. Vide order dated 20th January, 2010, the High Court directed that the Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children. ♦ In MAC.APP.633/2009, vide order dated 22nd February, 2010, the High Court has directed that since the FDRs have to be retained by the Bank, Bank need not prepare the FDRs. Instead, the Bank may issue the passbook of the fixed deposit account in which the fixed deposit amount as well as the interest paid are reflected and as and when the fixed deposit gets matured, the maturity amount should automatically be credited in the Saving Bank Account of the beneficiary. This will save the botheration of the bank to prepare the FDRs and it shall also save the botheration of the beneficiary to approach the bank again and again for discharge of the FDR. The effect of this modification would be that the bank will issue two passbooks to the beneficiary, one in respect of the Saving Bank Account in which the monthly interest and the maturity amount of the fixed deposit would be credited and the other in respect of fixed deposit account.	
VII.	**<u>ENFORCEMENT OF ORDER XXI RULE 1 OF THE CODE OF CIVIL PROCEDURE AND THE DIRECTIONS OF DELHI HIGH COURT PASSED IN THE CASE OF NEW INDIA ASSURANCE COMPANY LTD. VS. KASHIMIR LAL 2007 ACJ 688</u>** ♦ Order XXI Rule 1(a) and (2) of the Code of Civil Procedure provides that the judgment debtor (Insurance company) shall give notice of deposit of the award amount to the decree-holder (claimant) either through Court or directly to the decree-holder (claimant). Order XXI Rule 1(4) of the Code of Civil Procedure provides that the interest shall cease to run from the date of service of the notice referred to in Sub-Rule (2). ♦ It was pointed out to the Court that neither the Insurance Companies give any notice of deposit to the Claimants nor the Claims Tribunal give notice of deposit to the claimants as a result of which the claimants do not get the payment on time and due to delay, the Insurance companies use the money of the claimants without making payment of interest.	The enforcement of Order XXI Rule 1 of the Code of Civil Procedure and the directions of this Court passed in the case of **New India Assurance Company Ltd. Vs. Kashimir Lal, 2007 ACJ 688** shall ensure timely payment to the claimants without any harassment and in the event of any delay, the claimant would get interest up to the date of notice.

- It was also noticed by the High Court that the Claims Tribunals and the Insurance Companies do not follow the directions given by Delhi High Court in the case of **New India Assurance Company Ltd. Vs. Kashimir Lal, 2007 ACJ 688**.

- Vide order dated 27th January, 2010, the following directions have been given to the Claims Tribunals and the Insurance Companies:-

"13. All the Claim Tribunals are directed to send a report of compliance of Order XXI Rule 1(2) and (4) of the Code of Civil Procedure within a period of two weeks. The report be filed initially in respect of last one year. The report should contain the following particulars in tabular form:-

(i) Case title and number.
(ii) Date of award.
(iii) Award amount.
(iv) Date of deposit of cheque of the award amount.
(v) Date of notice by the Insurance company to the claimant.
(vi) Date of notice by the Claims Tribunal to the claimant.
(vii) Date of release of the cheque towards the award amount to the claimant.
(viii) Period for which the claimant is entitled to interest under Order XXI Rule 1(4), CPC.
(ix) Amount of interest to which the claimant is entitled under Order XXI Rule 1(4), CPC.
(x) Amount of the interest actually awarded to the claimant under Order XXI Rule 1(4), CPC.

14. The Report should also indicate as to how many cheques are presently deposited with the Claims Tribunals for being released to the claimants, how many cheques have expired and whether any cheques have been lost.

15. A separate report should indicate the format in which the Nazirs are maintaining the record; to consider whether it enables convenient access to the relevant information. Further, if there be room for improvement, the Claims Tribunals may indicate a possible revised format.

16. The Claims Tribunals are also directed to submit a report whether the Insurance companies have furnished the details of the bank account and the bank in all pending cases in terms of the judgment dated 9th December, 2005 of this Court in the case of **New India Assurance Co. Ltd.** (supra). The number of cases in which such details have been furnished and the number of cases in which such details have not been furnished be mentioned in the report. The list of cases in which the recovery of the award amount and the cost of Rs.5,000/- has been effected by attachment of Bank account during last one year in terms of the directions of this Court be also furnished.

17. The Report of all the Claims Tribunals be submitted before the Registrar (Vigilance) of this Court within two weeks. The Registrar (Vigilance) shall also examine the records maintained by the Nazirs of all the Claims Tribunals. The Claims Tribunals shall direct their Nazirs to produce the records maintained by them before the Registrar (Vigilance), who shall submit a report to this Court as to whether the records are being properly maintained. The Registrar (Vigilance) may also suggest measures for due implementation of the aforesaid provisions of law and the directions of this Court.

18. All the Insurance companies are directed to file the affidavit of compliance of Order XXI Rule 1 of the Code of Civil Procedure as well as the directions dated 9th July, 1997 passed by this Court. The affidavit shall initially contain the data for the last one year. The affidavit shall contain the following particulars in tabular form:-

(i) Case title and number.
(ii) Date of award.
(iii) Award amount.
(iv) Date of deposit of the award amount.
(v) Date of notice of deposit under Order XXI Rule 1(2) of the Code of Civil Procedure.
(vi) Date of clearance of the cheque of the award amount by the Bank.
(vii) Amount of interest payable under Order XXI Rule 1(4) of the Code of Civil Procedure (If no notice was given, the interest be calculated from the date of cheque up to the date of clearance of the cheque).
(viii) Amount of interest actually paid.

19. The affidavit shall also state whether the bank account number and the name of the Bank has been furnished in all pending cases to the Claims Tribunals in terms of directions of this Court. The affidavit be filed by all the Insurance companies within two weeks. The responsible officer of all the Insurance companies shall remain present in the Court on the next date of hearing along with all the relevant records."

- On 23rd February, 2010, the High Court passed the following interim direction:-

(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

(v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688.

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

(a) Date of award
(b) Case number
(c) Title of the case

	(d) Award amount (e) Date of deposit of the award amount (f) Date of notice of deposit by the depositor. (g) Date of notice of deposit by the Tribunal. (h) Amount of interest upto date of notice of deposit. (i) Whether award amount and complete interest deposited. (j) Balance outstanding interest. (k) Remarks (Action taken to recover the balance interest) (vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in New India Assurance Company Ltd. Vs. Kashmiri Lal (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days. (viii) In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels. (ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days."	
VIII	**<u>Delhi Motor Accident Claims Tribunal Rules, 2008</u>** ♦ In the case of FAO 492/1999**,** it came to the notice of Delhi High Court that Delhi Motor Accident Claims Tribunal Rules were drafted in March, 1999 and the Draft Rules were published on 16th August, 2001 inviting objections from the public but despite a lapse of more than eight years, the Rules have not yet been notified. Notice was, therefore, issued to Government of NCT of Delhi on 19th May, 2009 in response to which it was informed to the High Court that the Draft Rules were again published in Delhi Gazette on 3rd September, 2008 and the same are pending for approval before the Cabinet of Government of NCT of Delhi. ♦ Vide order dated 22nd June, 2009, Government of NCT of Delhi was advised to expedite the consideration of the said Rules and some suggestions were given by the High Court to be incorporated in the Draft Rules.	Delhi Motor Accident Claims Tribunal Rules, 2008 have very benevolent provisions. Some of the important provisions are that an uninsured vehicle cannot be released on superdari by any Court unless the owner of the offending vehicle gives sufficient security to satisfy the award that may be passed by the claims Tribunals. On the expiry of three

	♦ On 13th July, 2009, Government of NCT of Delhi notified Delhi Motor Accidents Claims Tribunal Rules, 2008. ♦ Vide order dated 5th November, 2009, the High Court has given suggestion to the Expert Committee appointed by the Ministry of Road Transport and Highways to consider inclusion of provisions of Delhi Motor Accidents Claims Tribunal Rules, 2008 in the Central Rules.	months of the seizure, the Magistrate shall auction the offending vehicle and send the amount received in auction to the Claims Tribunal to be adjusted in the award amount. The Rules also define the duties of the Police Officers, Registering Authority. Under the new Rules awards of the Claims Tribunals can be adjudicated like a decree of the Civil Court and the Claims Tribunals are vested with all the powers of the civil Courts. The reports submitted by the Investigating Officer, Registering Authority and the confirmation by the Insurance companies are presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.
IX	**<u>Scope of Section 168 and 169 of the Motor Vehicles Act, 1988.</u>** Section 168 of the Motor Vehicles Act provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunals shall follow such summary procedure as it thinks fit. However, it has been noticed that the Tribunals have not been conducting any inquiry but were conducting a normal civil trial due to which the disposal of the claim petition was getting unduly delayed. Vide order dated 22nd May, 2009 in the case of FAO No.884/2003, the directions have been issued by Delhi High Court to the Tribunals to conduct an inquiry into the claim petition instead of a protected civil trial.	The inquiry into the claim by the Claims Tribunals shall expedite the hearing and disposal of the claim petition
X	**<u>Enforcement of Section 196 of the Motor Vehicles Act, 1988</u>** Section 196 of the Motor Vehicles Act provides for imprisonment upto three months or fine upto Rs.5,000/- or both for the driver and owner of the uninsured vehicles. Delhi Police has not been prosecuting the offenders of uninsured vehicles under Section 196 of the Motor Vehicles Act. Show Cause Notice was issued to the Commissioner of Police on 19th August, 2009 in pursuance to which the	Strict enforcement of Section 196 of the Motor Vehicles Act, 1988 shall inculcate the discipline in citizens to insure the

	Delhi Police has regretted the lapse in not implementing Section 196 of the Motor Vehicles Act and has issued a Standing Order No.157/2009 for adding Section 196 of the Motor Vehicles Act in all pending investigations and to file supplementary challans in the cases pending trial in respect of uninsured vehicles. By invoking Section 196 of the Motor Vehicles Act, the owners of many uninsured vehicles have paid the claim amount to the claimants.	vehicles. Insurance of the vehicles is in the interest of the victims as well as the owners of the vehicles.
XI.	**<u>Prosecution of offenders holding fake driving licence as well as persons involved in fabricating/forging fake driving licence.</u>** There are large number cases relating to fake driving licences and no action is taken against the fake driving licence holders as well as persons who fabricate/forge fake driving licences. Forging and holding a fake driving is a serious offence and the person holding a fake driving licence is a danger to the society inasmuch as he is not legally entitled to drive the motor vehicle and may not be knowing driving at all or his driving licence may have been suspended for involvement in some accident. The persons holding fake driving licence are liable to be prosecuted under law but they drive freely on road. The fake driving licence holders should not be permitted to drive on the road. Vide judgment dated 3rd December, 2009 in MAC.APP.236/2009, Delhi High Court constituted a Committee to draw up a mechanism for prosecution of fake driving licence holders/forgers under Sections 465, 468, 471 and 474 of the Indian Penal Code and to make Delhi roads safe by ensuring that the fake driving licence holders do not drive freely on Delhi roads any more. The Committee constituted by Delhi High Court held its meeting on 14th December, 2009 and submitted its report before the High Court on 23rd December, 2009. Based upon the report of the Committee, the High Court passed the following directions on 23rd December, 2009:- (i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence cases. (ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1st January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3rd December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID acp-scrb-dl@nic.in. along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the authorized	The prosecution of fake licence holders will make Delhi roads safe.

	officer of the Insurance Company. (iii) The Delhi Police shall take the following action in respect of the aforesaid complaints:- (a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station. (b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect. (c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station. (iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police. (v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance Companies or other sources. (vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered in the entry against the information received. (vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper. (viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State. Delhi Police shall launch a special drive to book the persons who fake the driving licences. All the Insurance Companies have been directed to put the aforesaid directions to immediate compliance insofar as fresh cases of driving licences are concerned. All the Insurance Companies have also been directed to compile the data relating to the fake driving licences in respect of the accidents during the last three years and to make the complaint to Delhi Police within a period of four weeks.	
XII.	**<u>Judgment on the Doctrine of Sovereign Immunity</u>**	

	Air Force Truck killed a person in a motor accident on 22nd May, 2009. The Tribunal awarded a sum of Rs.4,74,488/- against which the Air Force filed the appeal before the High Court raising the plea of sovereign immunity. The law with respect to sovereign immunity is well-settled by the Hon'ble Supreme Court in various judgments. The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The Hon'ble Supreme Court in the case of **Pushpa Thakur v. Union, 1984 ACJ 559,** has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court. Vide order dated 12th November, 2009 in MAC.APP.284/2008, Delhi High Court has directed the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.	It is hoped that the Government will issue a circular to withdraw the plea of sovereign immunity in all cases relating to motor accident claims and the litigation in this regard shall come to an end.
XIII	**<u>Liability of the Insurance Company in respect of a pillion rider on a two-wheeler and occupants in a private car under comprehensive/package policy.</u>** A comprehensive/package insurance policy covers the occupants in a private car and a pillion rider on a two-wheeler and there is a specific clause in the insurance policies in this regard. Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) are the statutory authorities to regulate the tariff and terms and conditions of the insurance policies and there are directions of both these authorities to cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.	It is also hoped that large number of pending cases all over the country shall come to an end, and the claimants who have been denied compensation on this ground, shall ultimately get the compensation legitimately due to them.

	Despite the clause in the policy and the directions of the TAC and IRDA, the insurance companies do not accept their liability and litigation in this regard is pending in various Courts all over the country. In MAC.APP.176/2009, Delhi High Court examined the officers of United India Insurance Co. Ltd. as well as TAC and IRDA under Section 165 of the Indian Evidence Act. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16.11.2009, IRDA issued fresh circular reiterating the factual position. IRDA thereafter convened a meeting dated 26th November, 2009 of all the 17 Insurance Companies who after deliberations, admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies agreed to comply with the Circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Court on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies within two weeks and the withdrawal to be done within four weeks thereafter. The High Court held that where the vehicle is covered under a comprehensive/package policy, there is no need for a Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In view of the Tariff Advisory Committee's directives and those of the Insurance Regulatory Development Authority, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the case before it. All the Motor Accident Claims Tribunals functioning in Delhi have been directed to take note and ensure that no such plea is allowed to be put forward by any insurance company.	
XIV	**<u>Right of legal representatives to claim compensation after the death of the injured</u>** The accident dated 27th May, 2002 resulted in grievous injuries to the claimant, who filed the claim petition before the Tribunal. The claimant died during the pendency of the petition whereupon his legal representatives were substituted and an award was passed. The Insurance company challenged the award on the ground that the claim petition abated on death of the claimant and the right to sue did not survive in favour of the legal representatives. The Law Commission in its 178th Report has recommended the amendment to Section 306 of the Indian Succession Act, 1925 as well as Section 166 of the Motor Vehicles Act, 1988 to provide for initiation/continuation of proceedings by the legal representatives of the injured person upon his death. The Law Commission has referred to Full Bench judgment of Karnataka High Court in the case of Kannamma Vs. Dy. General Manager, ILR 1990 Karn. 4300 (FB) in which the Full Bench recommended that the provisions of Section 306	The Expert Committee appointed by the Ministry of Road Transport and Highways is considering the suggestions of the High Court.

	of the Indian Succession Act, 1925 and of Section 110A of the Motor Vehicles Act, 1939 be amended so as to permit the survival of the right of the injured person to seek compensation to his legal representatives, irrespective of whether the cause of death was relatable to the accident or not. In the subsequent, Single Bench judgment of Karnataka High Court in the case of Baburao Sataba Manabutaker vs. Doreswamy (MFA 4072/1998 dated 4.9.2001) lamented delay in amending the law and pointed out that the delay in amendment is causing grave injustice. The Government is still to act on the recommendation of 178th Report of Law Commission and the position continues as it is which is causing grave injustice to the victims of the road accident. Since the Government has now appointed a Committee to review the entire Motor Vehicles Act, vide order dated 4th November, 2009 in MAC APP.432/2009, the copy of this order has been directed to be sent to the Secretary, Ministry of Road Transport and Highways and to Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to consider the recommendations of the Law Commission.	
XV	**<u>Insurance Companies cannot deduct TDS under Section 194-A of the Income Tax Act from the interest on the award amount deposited under an interim order of the Court.</u>** It came to the notice of Delhi High Court that the Insurance Companies had been deducting TDS from the interest on award amount directed to be deposited by an interim order pending final determination of the appeals. After deduction, the TDS certificate is issued in the name of the Registrar General of the Court. The claimants cannot get the refund/adjustment of the TDS deducted and they suffer loss of TDS amount to that extent. Vide judgment dated 26th March, 2009 in MAC.APP.596/2008, Delhi High Court held that the deposit of award amount including interest with the Court under interim direction of the Court pending final determination of the appeal is only an inchoate right and, therefore, Section 194-A of the Income Tax Act does not apply and no TDS can be deducted.	The sufferings of victims of road accidents due to illegal deduction of TDS by Insurance Companies has come to an end.
XVI	**<u>Scope of Section 165 of the Indian Evidence Act.</u>** ♦ Section 165 of the Indian Evidence Act empowers the Judge to ask any question, in any form, at any time, of any witness or of parties, about any fact, relevant or irrelevant and may order production of any document or thing. The object of Section 165 of the Indian	The judgment shall help in expeditious

	Evidence Act is that the Judge is not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter and question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. ♦ Vide order dated 22nd May, 2009 in the case of Somari Devi Vs. Ragwar Singh, FAO No.884/2003, the Delhi High Court has laid down the scope of Section 165 of the Indian Evidence Act.	disposal of the cases. By examining the parties and the witnesses, the Judge can reach the truth and cut short the delay.
XVII	**Scope of Section 167 of the Indian Evidence Act, 1872.** Improper admission or rejection of evidence is not by itself a ground for reversal of a decision, if there is other evidence to support it. Where admissible evidence has been improperly rejected or inadmissible evidence has been admitted by the Judge, such improper reception or rejection of evidence shall not of itself be a ground for new trial or reversal of any decision in any case, unless substantial wrong or miscarriage of justice has been thereby occasioned; or, in other words, if the Court considers that after leaving aside the evidence that has been improperly admitted, there was enough evidence on the record to justify the decision of the lower court, or that if the rejected evidence were admitted the decision ought not have been affected thereby, no Court of appeal should set it aside. Scope of Section 167 of the Indian Evidence Act has been laid down in judgment dated 21st May, 2009 in MAC.APP.NO.158/2007.	The Appellate Court can effectively decide the appeal following Section 167 of the Indian Evidence Act.
XVIII	**Steps to curb delay and repeated adjournments for service of Respondents** ♦ In the appeals filed by the Insurance Companies, the stay is granted subject to deposit the entire award amount along with interest within 30 days and notice is issued to the claimants and date is fixed after about 45 days so that the appropriate order for disbursement of the award can be passed on the next date. However, invariably the appellants fail to file the process fee and, therefore, the case gets adjourned. At times, there are repeated failures on the part of the Insurance Companies to file the process fee as a result of which the claimants do not become aware of the deposit made in the High Court and grave injustice is caused to them. ♦ Delhi High Court has passed an order in MAC.APP. No.405/2009 to the effect that if the appellant fails to take steps for service of the respondents within one week or the process fee is filed but returned under objections and objections are not removed within three days, the Registry shall issue court notice to the respondents by ordinary process as well as registered AD and in that event, Rs.5,000/- shall be deposited as cost by the appellant before the next date and upon failure to deposit the cost before the next date, same shall be	The aforesaid order shall serve the following purpose:- (i) The date of service shall not be wasted because of the default of the appellant to take steps for service. (ii) The Judicial time wasted to attend the default hearings shall be saved. (iii) There are some cases where the

	deducted out of the statutory amount of Rs.25,000/- deposited by the appellant with the appeal under Section 173 of the Motor Vehicles Act.	appellant deliberately does not take steps to delay the proceedings. The appellant cannot now succeed in delaying the case. (iv) Injustice to the claimants due to failure of the appellant to take steps and delay of the appeal would be avoided. (v) The pre-emptory order of imposing cost would act as a deterrent to the counsels and the discipline would improve (vi) The funds collected by way of cost for default can be put to a benevolent use.
XIX	**<u>Settlement of pending death cases according to the Schedule accepted by the insurance companies</u>** On 29th May, 2009, all the four nationalized insurance companies, namely, New India Assurance Company Limited, Oriental Insurance Company Limited, National Insurance Company Limited and United India Insurance Company Limited agreed to settle all the pending death cases in Delhi according to the principles laid down by the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** decided on 15th April, 2009 with a slight reduction of multiplier by 2. The nationalized Insurance companies have also agreed to pay interest at the rate of 5% per annum. The schedule agreed to by all the nationalized companies for settlement of pending death cases is as under:- **1. <u>Multiplier</u>** **Age of the deceased (in years)** — **Multiplier** 15 – 25 — 16 26 – 30 — 15 31 – 35 — 14	The huge arrears of pending death cases can be settled by the said scheme.

36 – 40	13
41 – 45	12
46 – 50	11
51 – 55	9
56 – 60	7
61 – 65	5
Above 65	3

2. <u>Deduction for Personal and Living Expenses</u>

- **<u>Deceased – unmarried</u>**

(i) Deduction towards personal expenses. : 1/2 (50%)

(ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

- **<u>Deceased – married</u>**

(i)	2 to 3 dependent family members.	:	1/3rd deduction towards personal expenses.
(ii)	4 to 6 dependent family members.	:	1/4th deduction towards personal expenses.
(iii)	More than 6 family members	:	1/5th deduction towards personal expenses.

3. <u>Future Prospects</u>

(i) Below 40 years of age : Actual salary +

	50% towards future prospects. (ii) Between 40-50 years : Actual salary + 30% towards future prospects. (iii) More than 50 years job : Actual salary only. No addition for future prospects. (iv) Wages not sufficiently proved : Minimum wages + 50% towards inflation and price index. **4. Non-Pecuniary Damages** (i) Compensation for loss of estate : Rs.5,000/- to Rs.10,000/- (ii) Compensation for loss of consortium : Rs.5,000/- to Rs.10,000/- (iii) Compensation for loss of love and affection : Rs.5,000/- to Rs.10,000/- (iv) Funeral expenses, cost of transportation of body and medical expenses : Actual **5. Rate of Interest** Rate of Interest : 5.0%	
XX	**Proposed action plan for expeditious disposal of motor accident cases:-** The following plan for disposal of motor accident claim cases prepared by Justice J.R. Midha for expeditious disposal of motor accident cases was circulated by the Ministry of Law & Justice in the Conference on "The National Consultation for Strengthening the Judiciary towards reducing the Pendency and Delays" on 24th October, 2009:- "**I. FRESH ACCIDENT CASES** ★ The Police is the first agency to take cognizance of a motor accident and it has the entire evidence required for initiating the	The following action plan shall clear the huge arrears of pending motor accident claim cases all over the country.

proceedings for compensation.

- ★ The Police shall file an Accident Information Report under Section 158(6) of the Motor Vehicles Act before the Claims Tribunal along with all the relevant documents required by the insurance company to settle the claim.
- ★ The Police shall also produce the owner, driver, eye-witness and claimants before the Claims Tribunal.
- ★ The Police shall simultaneously serve the copy of the Accident Information Report on the Insurance Company.
- ★ The Tribunal shall treat the Accident Information Report of the Police as a claim petition under Section 166(4) of the Motor Vehicles Act.
- ★ The Tribunal shall conduct an inquiry under Section 168 of the Motor Vehicles Act and shall pass an award after recording the statement of the claimants, driver, owner and eye-witness.
- ★ Delhi Police has started the above system after the notice of contempt issued by the Delhi High Court for failure to comply with Section 158(6) of the Motor Vehicles Act for the last 15 years.
- ★ This system shall save the time lost in service of the owner, driver and eye-witness and the collection of relevant documents for passing the award.
- ★ By this system, a claim petition can be decided in 2-3 months time with 2-3 hearings against normal 50-100 hearings spread over 5-10 years.

II. DISPOSAL OF ARREARS OF PENDING MACT CASES

- ★ Large number of cases are pending for service of driver, owner and eye-witness of the offending vehicle. The Police be directed to produce them before the Claims Tribunal.
- ★ As per the Procedural Manual of Nationalized Insurance Companies for Motor Claims, the Insurance Company has to appoint an investigator immediately upon the receipt of the intimation of claim and upon receipt of the report of the Investigator, the Company has to compute the compensation in accordance with law and has to offer the same to the claimant. However, in actual practice, the Insurance company appoints an investigator, compute the compensation and make a provision of liability in their accounts but do not offer the compensation to the claimant and vehemently contest the claim petition before the Tribunal. The Insurance Companies be directed to appoint an officer in each case who shall be responsible for processing and settlement of each case according to their Procedural Manual. The admitted amount along with the computation and the investigator's report be filed by the Insurance company in all pending cases.
- ★ Where the service is complete, the death cases can be disposed of according to the attached Schedule agreed to by the Insurance Companies (The Schedule is based on the law settled by the Hon'ble Supreme Court with a slight reduction of multiplier by two and interest at the rate of 5%).

III. NEED FOR NEW LAW

- ★ More than one lakh people die in road accident a year, meaning thereby that one person die every ten minutes. A large

		number of cases are hit and run where the particulars of the offending vehicles are not traceable. A large number of vehicles are uninsured and the victims do not get any compensation in those cases. Even in the case of insured vehicles, the insurance companies do not have any attitude to process and settle the claim and they wait for the award of the Tribunal. Most of the victims of the road accident are sole bread winners from the poorest strata of the society and their family starve after the death of the victim. The Insurance companies vehemently fight the cases. The version of the Insurance companies is that the claim-premium ratio is 400% i.e. they are paying Rs.400 towards claim against Rs.100 as premium in motor insurance. ★ The road users have a fundamental right to life and liberty which shall include the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road user arising out of permitting the use of motor vehicles on the roads. ★ South African Model is best suited for our country which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission. ★ The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety. ★ The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, http://www.transport.gov.za/library/docs/raf/index.htm. ★ Delhi High Court has passed an order dated 25th September, 2009 advising the Government to examine the South African Law.”	

JUDGMENT OF DELHI HIGH COURT ON MOTOR ACCIDENT CLAIMS

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24.	**Computation of compensation in case of death of a business man** - Judgment dated 31.3.2009 in FAO 116/1998.	303-312
25.	**Computation of compensation in case of death of a student pursuing professional course** - Judgment dated 23.11.2009 in MAC.APP.No.135 & 359/2008.	313-320
26	**Implementation of Order XXI Rule 1 CPC –** Judgments dated 23rd February, 2010 and 27th January, 2010 in MAC.APP.No.422/2009	321-354
27.	**Computation of compensation in case of death of a person whose income is not proved** - Judgment dated 18.01.2010 in MAC.APP.No.511/2009.	355-361
28.	**Computation of compensation in case of death of a non-dependent spouse** - Judgment dated 15.01.2010 in MAC.APP.No.601/2007.	362-377
29.	**Computation of compensation in case of death arising out of bomb blast in a motor vehicle** - Judgment dated 03.02.2010 in MAC.APP.No.512 & 570/2006.	378-399
30.	**Computation of compensation in case of death of foetus** - Judgment dated 05.02.2010 in MAC.APP.No.602/2009.	400-439
31.	**Protection of award amount** – Orders dated 08.03.2010 and 07.04.2010 in MAC.APP.No.293/2008.	
32.	**Suggestions of Delhi High Court for amendment of the Motor Vehicles Act** – Order dated 22.03.2010 in MAC.APP.No.74/2001.	
33.	**Award of cost-** Judgment dated 26.03.2010 in FAO.No.365/1999	
34.	**Scope of inquiry-** Judgment dated 12.04.2010 in MAC.APP.No.609/2009	

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO.No.842/2003

Date of Decision: 21st April, 2009

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RAJESH TYAGI & ORS. ..... Appellants
Through: Mr. Sanjeev Kumar, Adv.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through: Mr. Manoj R. Sinha, Adv. for R-3.
Mr.V.P. Choudhary, Sr. Adv. and Amicus Curiae
Mr. S.C. Dhanda, Sr. Adv. and Amicus Curiae.
Mr. Ashok Popli, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

JUDGMENT (Oral)

1. The learned Tribunal had dismissed the claim petition on the ground that the owner of the offending vehicle was not impleaded. The finding of the learned Tribunal is contrary to the record because vide order dated 1st March, 1999, the learned Tribunal allowed the application dated 1st March, 1999 of the

previous owner to implead the new owner, M/s. Nath Extraction (P) Ltd. The effect of allowing the said application is that the new owner had been impleaded before the learned Tribunal. However, the learned Tribunal did not issue notice to the new owner. The learned Tribunal, after complete trial, dismissed the claim petition on the short ground that the new owner was not impleaded before the learned Tribunal.

2. I have examined the provisions of the Motor Vehicles Act, 1988 and the Delhi Motor Vehicles Rules, 1993 with the effective assistance of the learned amicus curiae, Mr. V.P. Choudhary, Senior Advocate and Mr. S.C. Dhanda, Senior Advocate. Section 168 provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunal shall follow such procedure as it thinks fit subject to the rules made in that behalf. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rules 118 (3) provides that the Claims Tribunal shall send notice to the owner and the insurer of the motor vehicle involved in the accident. It was thus, the duty of the Tribunal to have issued the notice to the owner of the offending vehicle. However, the learned Tribunal failed in its duty under the Motor Vehicles Act, 1988 and the Delhi Motor Vehicle Rules, 1993. Be that as it may, the notice has now been sent to

the owner of the offending vehicle and he has appeared before this Court. The learned counsel for respondent No.3 does not press this issue any more.

3. The learned counsel for the respondent No.3 submits that respondent No.3 raised an objection before the learned Tribunal that the driving licence of the driver of the offending vehicle was fake. The Trial Court Record has been perused in this regard. This plea was raised by respondent No.3 before the learned Tribunal but no evidence was led by respondent No.3 before the learned Tribunal and, therefore, the plea of fake driving licence is hereby rejected.

4. The only question which now remains to be examined is the quantum of compensation to be awarded to the claimants. The learned amicus curiae has suggested quantum of compensation which is recorded in the order dated 24th March, 2009. The Additional Standing Counsel for Delhi Police has also placed on record the income which the deceased would have earned if he had not died in the accident in question. Respondent No.3 is directed to submit its response on the quantum of compensation suggested by the learned Amicus Curiae in the light of the proof of future prospects submitted by the Delhi Police, on the next date.

5. It has been brought to my notice by the learned amicus curiae that Sections 158(6) and Section 166(4) are not being followed despite the directions of the Apex Court in the case of **General Insurance Council Vs. State of Andhra Pradesh, IV (2007) ACC 385 (SC).** In that case, the Hon'ble Supreme Court directed all the State Governments and Union Territories to instruct all concerned police officers to comply with the requirements of Section 158(6) of the Motor Vehicles Act read with Rule 159 and Form 54 of the Central Motor Vehicles Rules. It was further directed that periodical checking be done by the Inspector General of Police concerned to ensure that the requirements are being complied and appropriate action be taken in cases of non-compliance. The directions of the Hon'ble Supreme Court in the said judgment are reproduced as under:-

> **"It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation**

immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials."

6. The notice is, therefore, issued to the Commissioner of Police through Mr. Vikas Pahwa, learned Additional Standing Counsel to place on record whether the aforesaid directions of the Supreme Court regarding Section 158(6) of the Motor Vehicles Act are being followed. The data with respect to the compliance for the last 22 months i.e. from the date of the judgment of the Hon'ble Supreme Court be placed on record within two weeks. The particulars of the periodical checking required to be done by the Commissioner of Police in terms of directions of the Hon'ble Supreme Court be also placed on record. If any action has been taken against any erring officer for non-compliance of Section 158 (6), the same be also placed on record by way of an affidavit.

7. Section 166 (4) provides that the Claims Tribunals shall treat the report forwarded to it under Section 158(6) as an application for compensation. The learned Motor Accidents Claims Tribunals in Delhi are directed to place on record through the Registrar (Appellate) of this Court the report of compliance of Section 166(4) and the data for the last 22 months from the date of the judgment of the Hon'ble Apex Court be placed on record giving

details as to how many reports have been received and how many reports have been treated as application for compensation. The data be filed with this Court within two weeks.

8. The learned amicus curiae refers to and relies upon the judgments of Guwahati High Court in the case of **Union of India vs. Saraswati Debnath, AIR 1996 Guwahati 31** and Kerala High Court in the case of **Saramma Scaria vs. Mathai, 2003 ACJ 213**. The learned amicus curiae stresses the need for laying down the guidelines for the learned Tribunals.

9. Let the suggestions be placed on record in writing by the learned amicus curiae as well as other lawyers in this matter, within two weeks.

10. List for further hearing on 8th May, 2009 at 2.30 PM.

11. Copy of this order be given dasti to learned counsel for the parties as well as to the amicus curiae.

12. Copy of this order be also sent to the Registrar (Appellate) and the Additional Standing Counsel, Delhi Police under the signatures of the Court Master.

J.R. MIDHA, J

APRIL 21, 2009
s.pal

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 842/2003

RAJESH TYAGI & ORS. ..... Appellants
Through : Mr. A.K. Singh, Adv.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Manoj R. Sinha, Adv. for R – 3.
Ms. Mukta Gupta, Standing Counsel for Delhi Police.
Mr. V.P. Choudhary, Sr. Adv. and Mr. Anup Bhambhani, amicus curiae.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 18.05.2009

1. Ms. Mukta Gupta, Standing Counsel for Delhi Police is present and has handed over an affidavit by the DCP (Hqrs) of Delhi Police in terms of the order dated 8th May, 2009.

2. It is stated in the said affidavit that in pursuance to the judgment dated 9th July, 2007 passed by the Hon'ble Supreme

Court, Standing Order dated 12th December, 2007 was issued FAO

to all the concerned police officers directing them to comply with Section 158 (6) of the Motor Vehicles Act, 1988 and further the Joint Commissioners of police/Ranges were asked to periodically ensure the compliance of the directions of the Hon'ble Supreme Court. Copy of the Standing Order dated 12th December, 2007 has been filed as Annexure R-A. It is further stated in the affidavit that with respect to the victims of the road accident from July, 2007 to April, 2009, reports have been regularly sent to the Motor Accident Claim Tribunals. The details have been given in Annexure R – B. According to the Annexure R – B, 15,378 accidents have taken place during July, 2007 to April, 2009 out of which 3,647 accidents relate to death and 12,451 accidents relate to the bodily injury to the victims and the information in prescribed proforma has been sent to the Motor Accident Claim Tribunals.

3. Vide order dated 8th May, 2009, the notice was also issued to the Registrar (Appellate) to file the report as to the compliance of Section 166 (4) of the Motor Vehicles Act by the Motor Accident

Claim Tribunals. The learned Registrar Appellate has placed on record the reports received from the Motor Accident Claim Tribunals. There are 12 Motor Accident

Claim Tribunals who have stated that no report has been received under Section 158 (6) of the Motor Vehicles Act, 1988 from the Delhi Police.

6. In view of the total contradiction between the stand taken by the Delhi Police and the reports sent by the Motor Accident Claim Tribunals, the Delhi Police is directed to file the detailed report pertaining to each police station. The learned Standing counsel for Delhi Police submits that there are 123 police stations and the compilation of details would take long time. In first instance, report of the following police stations be submitted for the month of January, 2009:-

P.S. Tilak Marg under New Delhi District; P.S. Preet Vihar under East District; P.S. Shahadara under North East District; P.S. Civil Lines under North District; P.S. Shalimar Bagh under North West District; P.S. Darya Ganj under Central District; P.S. Ali Pur under Outer District; P.S. Lodhi Road under South District; P.S.

Mayapuri under South West District; P.S. Kalkaji under South East District and P.S. Punjabi Bagh under West District.

7. The details be filed on an affidavit by the SHO of the concerned police stations along with copies of the Accident Claim Forms containing the endorsement of the

acknowledgement by the Motor Accident Claim Tribunals. These affidavits be produced before this Court on the next date of hearing.

8. The Registrar (Appellate) is also directed to look into the affidavit filed by the Delhi Police and furnish the comments to the same on the next date of hearing.

9. The Registry is directed to furnish the copies of the reports received from the Tribunals to Ms. Mukta Gupta, Standing counsel for Delhi Police.

10. Learned counsel for respondent No.3 submits that he has filed an application under Order 41 Rule 27 of the Code of Civil Procedure vide diary No.85025 dated 14th May, 2009. However, the same is not on record. The Registry is directed to place on

record the same on the next date of hearing.

11. The learned counsel for respondent No.3 submits that he has forwarded the copy of the order dated 8th May, 2009 to respondent No.3 who shall deposit the award amount within the time granted by this Court. However, the shares of the appellants be clarified so that the cheques can be prepared in their names.

12. Appellant No.1 is the widow aged 43 years, appellant No.2 is the son aged 22 years and appellant No.3 is the daughter aged 18 years. The shares of the appellants in the award amount shall be as under:-

Appellant No.1	:	70%
Appellants No.2 and 3	:	15% each

13. Respondent No.3 is directed to deposit the award amount in the names of the appellants in the aforesaid ratio. The order relating to the mode of disbursement of the award amount shall be passed on the next date of hearing.

14. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

15. Copy of this order be given 'Dasti' to learned standing counsel for Delhi Police as well as to the learned amicus curiae under signatures of Court Master.

16. Renotify on 28th May, 2009 at 2:30 PM.

J.R. MIDHA, J

MAY 18, 2009
mk

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 842/2003

%

RAJESH TYAGI & ORS. ..... Appellants
Through : Mr. A.K. Singh, Adv.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Manoj R. Sinha, Adv. for R-3
Ms. Mukta Gupta, Standing Counsel and Mr. Vikas Pahwa, Add. Standing Counsel for Delhi Police
Mr. V.P. Choudhary, Sr. Adv. and Mr. Anup Bhambhani, amicus curiae.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

O R D E R
28.5.2009

1. Section 158(6) was incorporated in the Motor Vehicles Act, 1988 in the year 1994. Section 158(6) provides that the SHO of the Police Station shall send the Accident Information Report to the Motor Accident Claims Tribunals within 30 days of recording of the FIR and

a copy to the concerned Insurance Company. Section 158(6) of the Motor Vehicles Act is reproduced hereunder:-

> **"<u>Section 158(6)</u> - As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."**

2. Rule 150 of Central Motor Vehicle Rules, 1989 provides that the Accident Information Report under Section 158(6) shall be in Form 54 which is reproduced hereunder:-

"Form 54
[See rule 150 (1) and (2)]
ACCIDENT INFORMATION REPORT

1. Name of the police station _____
2. CR No./Traffic accident report _____
3. Date, time and place of the accident _____
4. Name and full address of the injured/deceased _____
5. Name of the hospital to which he/she was removed _____
6. Registration number of vehicle and the type of the vehicle _____
7. Driving licence particulars:
   (a) Name and address of the driver_____
   (b) Driving licence number and date of expiry _____
   (c) Address of the issuing authority_____
   (d) Badge No. in case of public service

vehicle _____

8. Name and address of the owner of the vehicle at the time of the accident _____

9. Name and address of the insurance company with whom the vehicle was insured and the particulars of the Divisional Officer of the said insurance company _____

10. Number of insurance policy/insurance certificate and the date of validity of the insurance policy/insurance certificate _____

11. Registration particulars of the vehicle (class of vehicles) _____

(a) Registration No. _____

(b) Engine number or motor number in the case of Battery Operated vehicles _____

(c) Chasis No. _____

12. Route permit particulars _____

13. Action taken, if any, and the result Thereof" _____

3. The importance of this Accident Information Report by the police is that Section 166(4) mandates the Claims Tribunal to treat the Accident Information Report as an application for compensation. However, the police was not following Section 158(6) of the Motor Vehicles Act which was brought to the notice of the Hon'ble Supreme Court in the case of **General Insurance Counsel vs. State of Andhra Pradesh, IV (2007) ACC 385 (SC)**. Vide judgment dated 9th July, 2007 the Hon'ble Supreme Court directed all the State Governments and Union Territories to instruct all concerned police officers to comply with the requirements of Section 158(6) of the Motor Vehicles Act read with Rule 150 and Form 54 of the Central Motor Vehicles Rules. It was further directed that periodical checking be done by the

concerned Inspector General of Police to ensure that the requirements are being complied and appropriate action be taken in cases of non-compliance. The directions of the Hon'ble Supreme Court in the said judgment are reproduced as under:-

> **"It is, therefore, directed that all the State Governments and the Union Territories shall instruct, if not already done, all concerned police officers about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials."**

4. On 21st April, 2009, this court issued notice to the Commissioner of Police to report whether the aforesaid directions of the Supreme Court regarding Section 158(6) of the Motor Vehicles Act are being followed. The data with respect to the compliance for the last 22 months i.e. from the date of the judgment of the Hon'ble Supreme Court was also directed to be placed on record. The particulars of the periodical checking required to be done by the Commissioner of Police in terms of directions of the Hon'ble Supreme

Court were also directed to be placed on record. If any action has been taken against any erring officer for non-compliance of Section 158 (6), the same was also directed to be placed on record by an affidavit.

5. The Accident Information Report by the police under Section 158(6) is to be treated as an application for compensation by the claims Tribunal under Section 166(4) of the Motor Vehicles Act and, therefore, direction was also issued to the Claims Tribunals on 21st April, 2009 to place on record the report of compliance of Section 166(4) and the data for the last 22 months from the date of the judgment of the Supreme Court giving details as to how many reports have been received from the police and whether the same have been treated as application for compensation.

6. In pursuance to the above directions, an affidavit dated 18th May, 2009 was filed by the Dy. Commissioner of Police (Hqrs.) on behalf of the Commissioner of Police stating that the information in prescribed proforma was being sent to the Motor Accident Claims Tribunals as per Annexure-R-B containing the details of 15,378 accidents from July, 2007 to April, 2009 in which the information in the prescribed proforma had been sent to the Motor Accident Claims Tribunals.

7. On 18th May, 2009, Motor Accident Claims Tribunals also

submitted their reports stating that they have not received any Accident Information Report in the prescribed proforma from the Police during the last 22 months.

8. Considering the contradictory stand taken by the Police that they have furnished the Accident Information Forms to the Tribunals during the last 22 months and the denial of the same by the Motor Accident Claims Tribunals, the Delhi Police was directed to submit the report in respect of eleven Police Stations specified in the order dated 18th May, 2009 about the compliance of Section 158(6) mentioned in their affidavit dated 18th May, 2009.

9. The learned Standing Counsel for Delhi Police has today handed over a fresh affidavit of Dy. Commissioner of Police (Hqrs.) along with the affidavits of eleven SHOs. The Dy. Commissioner of Police (Hqrs.) in the affidavit dated 27th May, 2009 seeks to withdraw the previous affidavit dated 18th May, 2009 on the ground that the Accident Information Reports have not been furnished to the Motor Accident Claims Tribunals and incorrect statement had been made in the previous affidavit dated 18th May, 2009. The affidavits of the SHOs filed today also reveal that the Accident Information Reports were not being filed in most of the cases with the Motor Accident Claims Tribunals.

10. From the affidavit dated 27th May, 2009 filed by the Dy.

Commissioner of Police (Hqrs.), it is clear that (i) Section 158(6) is not being complied with by the Police and; (ii) an incorrect affidavit has been filed before this Court.

11. The learned Standing Counsel for Delhi Police submits that Section 158(6) shall be strictly complied with in future and the Delhi Police is prepared to further streamline the system so that the victims of the road accident get compensation expeditiously.

12. Section 158(6) of the Motor Vehicles Act provides that the Police shall forward one copy of the Accident Information Report to the Motor Accident Claims Tribunal and one copy to the Insurance Company. The purpose is that immediately upon receipt of the intimation from the Police, the Insurance Company can investigate the claim and if the claim is found to be genuine, the same can be settled without the intervention of the Motor Accident Claims Tribunals.

13. It is noted that this is not the first case in which this Court has shown concern on the non-compliance of Section 158(6) of the Motor Vehicles Act.

14. On 28th October, 1996, a Public Interest Litigation titled **All India Lawyers Union Vs. Govt. Of NCT – C.W.P. CW-4076/1996** was filed in this Court in which notice was issued to the Commissioner of Police on 17th October, 1997 to report about the compliance of

Section 158(6)of the Motor Vehicles Act, 1988. The relevant portion of the order dated 17th October, 1997 is reproduced hereunder:-

> **"Mr. Aggarwal has also brought to our notice the provisions of sub-Section (6) of Section 158. The said provision stipulates that as soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer Incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer. Sub-Section (4) of Section 166 provides that the Claims Tribunals shall treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act. Learned counsel submits that he has learnt that no report under Section 158 (6) has ever been submitted to the Tribunals even though sub-Section (6) of Section 158 was brought on the statute book nearly three years ago. We would examine this aspect only after receipt of a report from the Commissioner of Police as to whether such reports have been sent or not. Let a copy of this order be sent to Commissioner of Police. Ms. Ahlawat will obtain requisite particulars from the Commissioner of Police/Police Department and file an affidavit on this aspect within three weeks."**

15. In pursuance to the above order, an affidavit was filed by the Dy. Commissioner of Police (Hqrs.), Delhi Police on 18th November, 1997 in which it was stated that the SHOs were not aware of the

latest amendment of the Motor Vehicles Act and the procedure which they were required to follow. It was further stated that instructions have now been issued to all the DCPs directing them to strictly comply with Section 158(6) of the Motor Vehicles Act. The instructions issued to the DCPs were filed as Annexure R-1 to the affidavit. The relevant portion of the affidavit is as under:-

> **"2. That pursuance to the orders passed by this Hon'ble Court on 17th of October, 1997, the information was sought from all Districts D.C.Ps. in regard to the fact whether the S.H.Os. are sending the copies of the F.I.R. to the concerned Motor Accident Claim Tribunal within 30 days as per provision of Section 158 Sub-Section 6 of the Motor Vehicle Act.**
>
> **3. That as per the reports received, the copy of F.I.R. in accident cases were not being sent by the S.H.Os. to the Accident Claims Tribunal probably the S.H.Os. were not aware of the latest amendment in the Motor Vehicle Act and the procedure which they were to follow. However, in the normal course they are handing over the copies of the F.I.R. to the next kin of victim, so that they can take their case to Motor Accident Claim Tribunal.**
>
> **4. That now the instructions have been issued to D.C.Ps. of all Districts/Crime and Railway, I.G.I. Air Port and Traffic, Delhi/New Delhi, directing them that provisions of Sections 158 sub-section 6 of Motor Vehicle Act shall be strictly complied with. District D.C.Ps. will ensure that compliance is made by all S.H.Os. working in their jurisdiction. Copy of the instructions issued is annexed as Annexure R-1.**
>
> **The above information is placed before this Hon'ble Court in compliance with the orders dated 17th of October, 1997."**

16. The aforesaid report of the Police was examined by this Court on 15th December, 1997 when the Court directed the Dy. Comm. of Police (Hqrs.) to personally appear before the Court on 12th February, 1998. The relevant portion of the order dated 15th December, 1997 is reproduced hereunder:-

> **"In terms of directions dated 17th October, 1997, affidavit of Shri S.Vasudeva, Deputy Commissioner of Police, Head Quarter-II, Delhi has been filed. It, inter alia, states that the copy of FIR in accident cases were not being sent by the SHOs to the Accident Claims Tribunal probably for the reasons that the SHOs were not aware of the latest amendment in the Motor Vehicle Act and the procedure which they were to follow. The affidavit further states that now instructions as in annexure R-1 have been issued to Deputy Commissioners of**
> **Police of all Districts/Crime and Railway, IGI Air Port and Traffic, Delhi directing them to strictly comply with the provisions of Section 158(6) of the Motor Vehicle Act. A perusal of the affidavit and the annexure R-1 clearly shows that even now the Police Authority is totally unaware of the relevant rules and the forms in which report is required to be sent. Learned counsel for the petitioner has drawn our attention to Rule 150 of Central Motor Vehicles Rules, 1989 and Form No.54 appended to the said Rules.**
>
> **We direct the concerned Deputy Commissioner of Police to be personally present in Court on the next date of hearing to, inter alia, explain whether instructions in terms of the Act and rules particularly in terms of Section 158(6) of the Act have been issued or**

not."

17. On 16th March, 1998, the Dy. Commissioner of Police (Hqrs.) appeared before this Court and assured the implementation of Section 158(6) of the Motor Vehicles Act and monitoring by the Police Headquarters. The assurance of the police was recorded by this Court and the writ petition was disposed of on 16th March, 1998. The relevant portion of the order dated 16th March, 1998 is reproduced hereunder:-

> **"Mr. Vasudeva, Dy. Commissioner of Police, Police Headquarter is present in Court. He has brought to our notice a Circular dated 19th December, 1997 issued to District Dy. Commissioner of Police and to Dy. Commissioner of Police (Crime) and Indira Gandhi International Airport and Traffic, bringing to the notice of the said officers the requirement of each police station under their respective jurisdiction to send information to MACT in respect of the accidents in the prescribed proforma in compliance of report on implementation of Section 158(6) of Motor Vehicle Act. From the said circular, it appears that the headquarter is monitoring the matters of sending all the FIRs by Police Stations on MACT. We hope that the Police authorities would continue to perform its functions in terms of Section 158(6) of the Act. The MACT on the receipt of the said information shall proceed in the matter in accordance with law."**

18. Despite the aforesaid assurance of the Police and order dated 16th March, 1998, Section 158(6) was not complied with by the Delhi

Police. Two more Public Interest Litigations were filed in this Court, namely, **All India Lawyers Union Vs. Union of India – C.W.P.Nos.4614/1996 and All India Lawyers Union Vs. Govt. Of National- Capital Territory Of Delhi C.W.P. Nos. 506/1999.** An affidavit dated 6th September, 1999 was filed by DCP(HQ) of Delhi Police in CWP No.506/1999 in which it was stated that the reports regarding accident cases were being sent to concerned MACT Courts as early as possible in Form 54 of Section 158(6) of the Motor Vehicles Act. The relevant portion of the affidavit dated 6th September, 1999 is reproduced hereunder:-

> **"2. That the reports regarding accident cases are being sent to the concerned M.C.A.T Courts as early as possible in Form 54 in terms of section 158(6) of Motor Vehicle Act 1988.**
>
> **3. That, however the Delhi Police undertakes to comply with all/any directions given by this Hon'ble Court."**

19. Vide order dated 17th August, 2000 in CWP No.4614/1996, Delhi Police was directed to furnish information on affidavit about the number of cases where information has been sent under Section 158(6) of the Motor Vehicles Act whereupon an affidavit was filed by Dy. Commissioner of Police (Hqrs.) of Delhi Police on 17th October, 2000 in which it was stated as under:-

> **"1. That pursuant to the directions passed by this Hon'ble court on 17.08.2000 the deponent**

submits that Police Department has already issued a Circular to all Districts with respect to the compliance of provision of Section 150 and 158 of the Motor Vehicles Act. Copy of the Circular with the proforma is enclosed herewith as Annexure – A.

2. That in compliance to the above Circular all the SHOs of the respective Police Stations are sending reports to the concerned M.A.C.T. Courts to treat them as claim Petition of the injured or deceased family member.

3. That the following are number of cases registered for fatal accidents and bodily injury and information with respect to each case has been sent to the concerned M.A.C.T. Court for further necessary action.

Year	Fatal	Bodily injury
1999	1930	7626
2000 (Upto July)	1161	4851

4. That in view of the submissions made above it is submitted that answering respondents are fully complying with the mandatory provisions of the Motor Vehicles Act."

20. Vide order dated 19th October, 2000 in CWP No.4614/1996, the Division Bench of this Court directed the District Judge to collect the information from the Motor Accident Claims Tribunals as to the number of cases in which such information had been received and the action taken. The relevant portion of the order dated 19th October, 2000 is reproduced hereunder:-

"From the affidavit filed by the Deputy Commissioner of Police, HQ, it appears that in terms of the requirements of Section 158(6) of the Motor Vehicles Act 1988 read with Rule 150 of the Motor Vehicles 1989 report has been

given to the concerned M.A.C.T. in the following number of instances:-

Year	Fatal Accidents	Bodily Injury
1999	1930	7626
2000 (Upto July)	1161	4851

Let the District Judge collect information from the different M.A.C.Ts. and furnish to this Court the number of cases where such information has been received and action under Section 158(6) of the Act or under the relevant provisions applicable to the cases noted above has been taken."

21. In pursuance to the aforesaid order, the report was submitted by the Tribunals that the police was only sending the copies of the FIRs and no reports under Section 158(6) of the Motor Vehicles Act in Form 54 of the Central Motor Vehicles Rules, 1999 had ever been sent by the Police Stations.

22. Both the aforesaid writ petitions were disposed of by this Court by a common order dated 12th April, 2001 observing that the information furnished was not in prescribed form and usually a copy of the FIR was furnished which does not meet the requirement of law. It was directed that the concerned offices should strictly comply with the requirements as stipulated in statutory provisions. The relevant portion of the judgment is reproduced hereunder:-

> **"7. From the reports received from the Tribunals it is clear that in a large number of cases the information furnished is not in the prescribed format. Usually a copy of the FIR is furnished. Same does not meet the requirement of law. FIR does not contain the required details in most cases. The concerned offices are to strictly comply with the requirements as stipulated in the statutory provisions.**
>
> **8. It is brought to our notice that when documents are seized after accident, normally copies of those documents are not retained. It would be proper and appropriate if xerox copies of driving license, policy of insurance and/or certificate of insurance are retained before the originals are given on Supardari. That would facilitate the claimant, insured as the case may be to get the particulars and furnish them in the claim petition. Similarly, insurer may get the details verified, and that would facilitate early disposal of claim petitions. We direct the Commissioner of Police to issue appropriate instructions in this regard to the concerned officers."**

23. From the aforesaid orders, it is clear that Section 158(6) of Motor Vehicles Act, 1988 has not been implemented by Delhi Police during the last about 15 years despite two orders of this Court and one by the Apex Court. Time and again incorrect affidavits have been filed by Delhi Police before this Court stating that Section 158(6) of the Motor Vehicles Act was being strictly complied with and the Accident Information Reports were being sent to the Motor Accident Claims Tribunals in prescribed Form 54. The affidavit dated 18th May, 2009 also contains incorrect statement regarding the filing of the

Accident Information Reports in prescribed form during July, 2007 to April, 2009. There is clear non-compliance of the orders dated 16th March, 1998 as well as 12th April, 2001 passed by this Court.

24. Considering the non-compliance of the orders dated 16th March, 1998 and 12th April, 2001 of this Court as well as the filing of affidavit dated 18th May, 2009 containing incorrect statements, show cause notice is issued initially to Dy. Commissioner of Police (Hqrs.), Delhi Police to show cause as to why action for contempt be not initiated against him, returnable on 3rd June, 2009. Let an affidavit be filed giving the names of the officers responsible for non-compliance of the orders dated 16th March, 1998 and 12th April, 2001 during the last 22 months for issuance of notice to them, before the next date of hearing.

25. This case cannot be closed on the mere apology and assurance of the Police that they shall now implement the Section 158(6) of the Motor Vehicles Act, 1988. This Court twice accepted the assurance given by the Police and closed the cases in 1998 and 2001. The implementation of Section 158(6) shall be monitored by this Court for some time. Let the Police file a monthly report of the compliance of Section 158(6) with this Court. The first report relating to the month of June, 2009 be filed by 15th July, 2009 before the Registrar

(Vigilance) who shall examine the same and place it on record with his comments.

26. Section 166(4) of the Motor Vehicles Act, 1988 has also not been implemented because of failure of Police to file Accident Information Reports. However, upon the filing of the Reports by the Police, Section 166(4) should be strictly implemented. The Tribunals are directed to maintain separate Institution Register for institution of the Accident Information Reports under Section 158(6) of the Motor Vehicles Act, 1988 and the cognizance of the Reports be taken on judicial side as in the case of Final Reports under Section 173 of the Code of Criminal Procedure, 1973 and the notice be issued to all concerned. If the complete information is not furnished in the Accident Information Report, the Tribunal shall fix a date for furnishing of balance information by the Police. The Tribunals shall also submit a monthly report of compliance of Section 166(4) of the Motor Vehicles Act, 1988 through the Registrar (Vigilance) of this Court. Copy of this order be sent to all the Motor Accident Claims Tribunals through the Registrar (Vigilance).

27. The learned Standing Counsel for Delhi Police submits that the Dy. Commissioner of Police (Hqrs.) regrets the lapse of non-implementation of Section 158(6) and non-compliance of the orders

of this Court. It is further submitted that unconditional apology has been tendered in the affidavit dated 27th May, 2009 and Delhi Police is prepared to take all possible steps to streamline the system to ensure that Section 158(6) of the Motor Vehicles Act is strictly implemented in its true letter and spirit and the learned Amicus Curiae may give the suggestions in this regard.

28. The leaned Amicus Curiae has given some suggestions to streamline the system, a copy whereof has been furnished to learned Standing Counsel for Delhi Police who seeks some time to consider the same and to submit a report on the next date of hearing. It is submitted by the learned Amicus Curiae that the Police is not strictly enforcing Sections 180/181/182/183/184 /185/187/192/192A/194/195/196/197 of the Motor Vehicles Act, 1988. If the vehicle was not insured at the time of the accident, the offender should be prosecuted under Section 196 of the Motor Vehicles Act, 1988 which provides for punishment of imprisonment which may extend to three months, or with fine which may extend to Rupees one thousand or with both. If there is no valid permit, the offender should be prosecuted under Section 192A of the Motor Vehicles Act, 1988. The Delhi Police shall consider these suggestions and make submissions on the next date of hearing.

29. The learned Standing Counsel for Delhi Police submits that a meeting of senior Police Officers with the learned Amicus Curiae Sh. V. P. Chaudhary, Senior Advocate and Sh. Anup Bhambhani as well as Officers of the Insurance Companies shall be fixed for 30th May, 2009 at 11.00 AM in the Conference Room of the Police Headquarters to examine the suggestions given by the learned Amicus Curiae. Mr. Kanwal Choudhary, nominated counsel for the New India Assurance Co. Ltd., is present in the Court and he undertakes to inform all the insurance companies about the aforesaid meeting. The senior officers from the Insurance Companies as well as nominated counsels and the learned Amicus Curiae shall attend the meeting. The report of the Delhi Police in this regard shall be considered on the next date of hearing.

30. List for further hearing on 3rd June, 2009 at 2.30 PM. Dy. Commissioner of Police (Hqrs.) is directed to remain present in Court on the said date.

31. Copy of the order be given dasti to the Standing Counsel for Delhi Police, the learned Amicus Curiae and Mr. Kanwal Choudhary, nominated Counsel for the New India Assurance Co. Ltd. Copy of this order be also sent to all the Motor Accident Claims Tribunals.

J.R. MIDHA, J

MAY 28, 2009
s.pal

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 842/2003

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RAJESH TYAGI & ORS. ..... Appellants
Through : Mr. A.K. Singh, Adv.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Manoj R. Sinha, Adv. for R-3.
Ms. Mukta Gupta, Standing Counsel and Mr. Vikas Pahwa, Add. Standing Counsel for Delhi Police.
Mr. V.P. Choudhary, Sr. Adv. and Mr. Anup Bhambhani, amicus curiae.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

O R D E R
08.06.2009

1. The DCP (Headquarters) of the Delhi Police has filed the affidavit dated 3rd June, 2009 in which it was stated that a meeting was convened by the Commissioner of Police on 30th May, 2009. It is stated that various steps are being taken to ensure the foolproof compliance of the provisions of the Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1999 and SHOs of all the Police Stations

have been directed to comply with Section 158(6) of the Motor Vehicles Act, 1988 read with FAO 842/2003

Rule 150 and Form 54 of the Central Motor Vehicle Rules, 1999 and the Joint Commissioners of Police, Deputy Commissioners of Police and Assistant Commissioners of Police have been directed to closely monitor the compliance.

2. It is further stated in the affidavit that Accident Information Reports (Forum 54) as well as other information as per Motor Vehicles Act/Rules is being put on Delhi Police Website www.delpolice.nic.in and the MACTs/Insurance Companies will be able to download these reports from the website. It is further stated that various measures shall be taken as detailed in the Minutes of the Meeting dated 30th May, 2009 for strict enforcement of Section 158(6) of the Motor Vehicles Act. The Commissioner of Police has formulated the following monitoring mechanism:-

(i) Maintenance of a register at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned MACT, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register.

(ii) Delivery of FIR to the Claims Tribunals on the date of registration.

(iii) Entries in red ink in FIR index about date of dispatch of AIR.

(iv) Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.

(v) ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) to the learned MACT, owner and insurer of the offending vehicle and the victim/his or her family.

(vi) MACT Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.

(vii) Monthly meeting of ACsP, PG Cell, In-charge of MACT Monitoring Cells with the Claims Tribunals.

(viii) Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.

(ix) Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.

(x) Monitoring of timely delivery of AIR (Form 54) through new computerized system of Police Station.

(xi) Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.

(xii) Installation of checklist boards in SHOs rooms.

(xiii) Establishment of District Cells as pilot project in three districts.

3. The Delhi Police has also examined the suggestions given by the learned Amicus Curiae and has accepted some of the suggestions which are as under:-

(i) Additional information in Accident Information Report.

The names and addresses of the next of kin shall be provided in the Accident Information Report.

The information relating to the nature of injuries suffered by the victim, name and addresses of the eye-witnesses and particulars of permit and fitness shall also be provided upon orders of this Court.

(ii) Furnishing of documents along with Accident Information Report.

The Police has no objection in furnishing the documents that are available at the time of filing of the AIR (Form 54). However, the documents which are not available at the time of filing of the AIR, shall be furnished immediately upon being received. It is further submitted that hospitals delay the issuance of MLC and post mortem reports and, therefore, directions may be issued to the hospitals to expedite the issuance of MLC/post mortem report in accident cases.

(iii) Release of offending vehicle on superdari only after driver and owner have produced all the relevant documents, namely, driving licence, registration cover, insurance, permit and fitness.

The police has agreed to implement this suggestion upon directions by this Court.

(iv) Production of driver, owner of the offending vehicle before motor accident Claims Tribunals.

The police has agreed to implement this suggestion upon directions by this Court.

(v) Production of eye witnesses before learned Tribunal.

The directions of this Court are required for implementation of this suggestion.

4. The undertaking of Delhi Police to strictly enforce Section 158(6) of the Motor Vehicles Act read with Rule 150 and Form 54 of the Central Motor Vehicles Rules and also take additional measures detailed in the affidavit dated 30th May, 2009 and the Minutes of Meeting dated 30th May, 2009 is accepted. In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunals within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-

"14. In case of death: Names and address of the next of kin of the deceased.

15. In case of injury: Nature of injuries suffered

16. Names and addresses of the eye-witnesses.

17. In case of transport vehicles:
(i) Particulars of the permit.
(ii) Particulars of the fitness certificate".

5. The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy, permit and fitness certificate of the

offending vehicle. MLC and Post - mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.

6. Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents. The four nationalized companies, i.e. New India Assurance Company Ltd., Oriental Insurance Company Ltd., United India Insurance Company Ltd. and National Insurance Company Ltd. have set up a centralized cell at Oriental House, A-25/27, Asaf Ali Road, New Delhi-110002 for receiving AIR. The Police shall, therefore, send

the copy of the AIR (Form-54) to these insurance companies at the aforesaid address.

7. The insurance companies shall investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and shall submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 30 days. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the

Insurance Company shall deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal.

8. In view of the aforesaid steps being taken by Delhi Police, the Motor Accident Claims Tribunals need to set up the following corresponding procedure:-

(i) Maintenance of a register for recording of the FIR which shall be received daily from the police stations. The Accident Information Report and private claim petition filed in respect of an FIR be marked in this register.

(ii) Maintenance of a separate institution register for registering the AIR as miscellaneous application.

(iii) Listing of AIR on the judicial side and issuance of notice to the claimant, owner, driver and Insurance Company.

(iv) Notice to the claimant, owner and driver be served through the Investigating Officer.

(v) Notice of Insurance Company be served through the nominated counsel of each company.

(vi) AIR be listed as a separate category in the cause list as miscellaneous application.

(vii) After appearance of the claimant, the AIR be registered as a claim petition.

(viii) If the claimant has filed a separate claim petition, the AIR be tagged with the claim petition.

9. Copy of this order be sent to all Motor Accident Claims Tribunals and the Insurance Companies for compliance.

10. It is noted that the reasons for delay in disposal of claim cases are as under:-

(i) Delay in service of the driver and owner of the offending vehicle.
(ii) Non-appearance of the driver and owner despite service.
(iii) Non-production of the driving licence by the driver and the owner.
(iv) Non-production of the insurance policy, registration cover, fitness, service and permit by the owner.

(v) The plea of the owner that he has sold the vehicle before the accident.

(vi) Avoidance of liability by the insurance company on the ground that the driver and owner are not producing the relevant documents.

(vii) In the case of uninsured vehicles, claimants are unable to enforce the award against the owner.

11. The delay in disposal of the claim petitions can be avoided by directing the police and the concerned Magistrate not to release the vehicle on superdari till the driver and owner appears before the Clams Tribunals and produce all the relevant documents and if the vehicle is uninsured, the owner should furnish sufficient security or the vehicle should be attached before judgment so that the recovery of the award to the extent of the value of the offending vehicle is safeguarded. The Division Bench of this Court has passed an order dated 24th September, 2008 in **W.P.(Crl.)No.878/2007** titled as **Court on its own motion vs. State** to the effect that the blue line buses shall not be released unless Rs.1,00,000/- is deposited in death cases with the concerned Magistrate.

12. At the initial stages of the investigation till the offending vehicle is released on supardari, the driver and the owner of the offending vehicle are normally in control of the Investigating Officer of the Police and he can produce them before the Claims

Tribunal. Investigating officer also has the full access to the eye-witness of the accident. The Investigating Officer of the police can produce the driver and owner before the Claims Tribunal along with the Accident Information Report under Section 158(6) of the Motor Vehicles Act before the Claims Tribunal who can record their statement and verify the documents and if all the documents are in order, the Insurance Company cannot delay or dispute the liability. Necessary guidelines in this regard need to be framed.

13. List before appropriate Bench on 3rd July, 2009 after obtaining orders of Hon'ble the Chief Justice for appropriate directions on the following suggestions:-

(i) The Investigating Officer shall produce the driver, owner and eye-witnesses of the accident before the MACT along with the Report under Section 158(6) of the Motor Vehicles Act who shall record their statement relating to the driving licence, registration cover, insurance policy, fitness, permit etc. of the offending vehicle before release of the offending vehicle to the owner on superdari.

(ii) The motor vehicles involved in the accident shall not be released on superdari unless the owner and driver have appeared before the Court of MACT and have furnished all the relevant documents i.e. driving

licence, registration cover, insurance policy, fitness, permit etc. of the offending vehicle before release of the offending vehicle to the owner on superdari. If the vehicle is not insured, the vehicle shall be released on superdari only after the owner furnishes sufficient security to the satisfaction of the Court to pay the compensation or at least equal to the value of the vehicle.

J.R. MIDHA
(VACATION JUDGE)

JUNE 8, 2009

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% 20.07.2009

Present : Ms. Mukta Gupta, Standing Counsel for Delhi Police.
Mr. V.P. Choudhary, Sr. Adv. with Ms. Sushma, Adv. and Mr. A.J. Bhambhani, Adv. amicus curiae.
Mr. Kanwal Choudhary, Adv. for New India Assurance Co. Ltd.
Ms. Manjusha Wadhwa, Adv. for Oriental Insurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for National Insurance Co. Ltd.
Mr. K.L. Nandwani, Adv. for United India Insurance Co. Ltd.

+FAO.No.842/2003
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1. Ms. Mukta Gupta, learned Standing Counsel for Delhi Police submits that the Delhi Police has filed the status report for the month of June, 2009. The status report has also been received from the Claims Tribunals. Let the Registrar (Vigilance) examine the status reports filed by the Delhi Police and Claims Tribunals and submit his comments with respect to the compliance by all concerned before the next date of hearing.

2. It has been pointed out by the learned Standing counsel that Annexure 'G' to the report contains the district wise compliance of all the districts. It has been further pointed out that in some

cases, the Claims Tribunals have refused to

accept the Accident Information Report without the complete documents and the presence of the injured and the accused. The learned Standing counsel submits that the clarification be issued to avoid the rejection of the Accident Information Report by the Claims Tribunals. The learned Standing counsel further points out that one Claims Tribunal, has issued direction regarding filing of undertaking in particular formats.

3. It is clarified to the extent that the learned Tribunals shall accept the Accident Information Reports along with the available information and documents in terms of order dated 8th June, 2009 and if any information/document is not available at the time of submitting of the Accident Information Report, the learned Tribunal shall fix a date for furnishing of the deficient information/document.

4. On 13th July, 2009, Government of NCT of Delhi has notified the Delhi Motor Accident Claims Tribunals Rules, 2008. Rule 3 defines the duties of Investigating Officer of Delhi Police. Rule 4 defines the duties of Registering Authority. Rule 5 defines the

duties of Insurance Company. Rule 6 prohibits the release of uninsured motor vehicle involved in the accident or where the registered owner fails to

furnish copy of the insurance policy unless the registered owner furnishes sufficient security to the satisfaction of the Court to pay the compensation that may be awarded in the motor accident claim. On the expiry of three months of the seizure of the vehicle, such motor vehicle shall be sold in public auction by the Magistrate and the proceeds thereof shall be deposited with the Claims Tribunal to be adjusted against the award. Under Rule 7, the reports of the Investigating Officer of the Police and the Registering Authority as well as the confirmation by Insurance Company under Rule 5(b) shall be presumed to be correct and the same shall be read in evidence without formal proof. Rule 18 empowers the Claims Tribunals to direct the Medical Officer or Board of Medical Officers to examine the injured and submit a report indicating the degree and extent of disability within 15 days of the receipt of such directions. Rule 27 provides the guidelines for protection of the award amount. Rule 31 empowers the Claims

Tribunals to execute the award like a decree of Civil Court. Rule 32 vests the Claims Tribunals with all the powers of a Civil Court for discharging its functions.

5. The Motor Accident Claims Tribunals Rules were drafted by Mr. R.K. Gauba, Registrar (Vigilance) of this Court and were sent to Government of NCT of Delhi back as in March, 1999 but the same were kept pending. Notice was, therefore, issued to Government of NCT of Delhi on 22nd June, 2009 in FAO No.492/1999 and some suggestions were given by this Court to be incorporated in the said Rules. The learned counsel for Government of NCT of Delhi informed this Court on 16th July, 2009 that the Rules have been notified by Government of NCT of Delhi on 13th July, 2009 and the suggestions by this Court are being processed and the same shall be incorporated by an amendment to the Rules which is likely to take 10 – 12 weeks. The Delhi Motor Accident Claims Tribunals Rules, 2008 are very exhaustive and shall streamline the law relating to motor accident claims and this Court appreciates the work of Mr. Gauba in this regard.

6. The Motor Accident Claims Tribunal Rules, 2008 have been circulated by the Registrar General to the Claims Tribunals and the Metropolitan Magistrates.

7. Ms. Mukta Gupta, learned Standing counsel for Government of NCT of Delhi shall ensure that the new Rules

are circulated to concerned police officers, public prosecutors, registration authorities and hospitals under the Government of NCT of Delhi. The Government of NCT of Delhi and Delhi Police shall give adequate publicity to these Rules.

8. Ms. Monika Garg, learned Standing Counsel for Union of India shall ensure circulation of these rules to all the hospitals in Delhi under the Central Government.

9. The nominated counsels for all the four nationalized insurance companies are present and they shall circulate these rules to all the insurance companies for compliance of their duties specified in Rule 5.

10. List for the report of the Registrar (Vigilance) with respect to the status report of Delhi Police and the Claims Tribunals on 4th September 2009 at 2:30 p.m. Considering the voluminous reports

filed by the Delhi Police and Claims Tribunals, Registrar (Vigilance) may take the assistance of the OSD (Vigilance) in this matter.

11. Vide order dated 8th June, 2009, this case was directed to be listed before Hon'ble the Chief Justice for adjudication on two issues of public interest out of which one issue related to the prohibition on the release of uninsured vehicles on

superdari which has been incorporated in the Delhi Motor Accident Claims Tribunal Rules, 2008 notified on 13th July, 2009. Rule 6 clearly prohibits the Courts from releasing the uninsured vehicles as well as the vehicles in respect of which registered owner fails to furnish copy of the insurance policy unless the registered owner furnishes sufficient security to the satisfaction of the Court. These Rules have come into force on 13th July, 2009 and, therefore, this issue does not survive any more.

12. With respect to the second issue relating to the directions to the Investigating Officer of the Police to produce the driver, owner and eye-witness of the accident before the Claims Tribunals, the suggestion has been given to Government of NCT of Delhi. Government of NCT of Delhi is contemplating to amend the Rules

to incorporate the suggestions. The suggestions are contained in the order dated 22nd June, 2009 passed in FAO No.492/1999. If the Government of NCT of Delhi carries out the necessary amendments, the second question would also be resolved without requirement of any adjudication.

13. The learned Standing counsel for Government of NCT of Delhi as well as amicus curiae suggest that the action of Government of NCT of Delhi with respect to the amendment of Rules be awaited. The date of 24th July, 2009 is, therefore, cancelled and fresh date shall be fixed after the response of Government of NCT of Delhi in FAO No.492/1999.

14. The learned Standing counsel for Delhi Police submits that the private insurance companies be also directed to appoint their nodal officer and the names, addresses, e-mail and telephone number of the nodal officer be provided to Delhi Police so that the copies of the Accident Information Reports can be served on them.

15. Mr. Pankaj Seth, Advocate has furnished the names, addresses and telephones numbers of the nodal officers of the private insurance companies which are as under:-

1. Mr. Sanjay Gupta,
Assistant Manager-Legal
Bajaj Allianz General Insurance Co. Ltd.
Second Floor, 1 DLF Industrial Plot,
Moti Nagar,
Delhi-110015
Mobile No.9910385880
Email: sanjay.gupta@bajajallianz.co.in

2. Mr. Mohommad Azhar Wasi,
Branch Claims Manager,
TATA AIG General Insurance Co. Ltd.,
1st Floor, Lotus Tower,
Community Centre,
New Friends Colony,
New Delhi-110025
Mobile No.9873417445
Email: mohdazhar.wasi@tata-aig.com

3. Mr. Rajneesh Kohli,
DGM,
Cholamandalam MS General Insurance Co. Ltd.,
1st Floor, Plot No.6,
Pusa Road, Metro Pillar –81,
New Delhi-110005
Mobile No.9818188051
Email: KohliR@cholams.murugappa.com

4. Mr. Gaurav Gaba,

Manager – Legal,
ICICI Lombard General Insurance Co. Ltd.
315, 3rd Floor, Aggarwal City Mall,
Plot No.4, Road no.44,
Pitampura
New Delhi-110034
Mobile No.9873915301
Email: gaurav.gaba@icicilombard.com

5. Mr. Navneet Goyal,
Senior Executive – Legal,
Reliance General Insurance Co. Ltd.,
2nd Floor, 60 Okhla Industrial Area, Phase-III,
New Delhi.
Mobile No.9810708784, 9310612538
Email: navneet.goyal@relianceada.com

6. Mr. Kapil Banati,
Assistant Manager – Legal,
IFFCO TOKIO General Insurance Co. Ltd.,
FAI Building, 10 Shaheed Jeet Singh Marg,
Qutub Institutional Area,
New Delhi.
Mobile No.9818026809
Email: kapil.banati@itgi.co.in

7. Mr. S. Srinivasan,
GM,
Royal Sundaram Alliance Insurance Co. Ltd.
"Sorrento Building", No.6, 1st floor,
Lattice Bridge Road, Adyar,
Chennai – 600020
Mobile No.09940132004
Email: s.srinivasan@royalsundaram.in

16. The learned Standing counsel may circulate this list to the concerned police officers to ensure the service of the Accident Information Reports on them.

17. Copy of this order be given 'Dasti' to learned Standing counsel for Government of NCT of Delhi and Union of India, amicus curiae and the nominated counsels for the insurance companies under the signature of Court Master. Copy of this order be also sent to the Claims Tribunals through Registrar (Appellate).

J.R. MIDHA, J

JULY 20, 2009
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 842/2003

RAJESH TYAGI & ORS. ..... Appellants
Through : None.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Atul Nanda Standing Counsel for Union of India.
Ms. Meera Bhatia and Ms. Amita Arora, Advs. for Delhi Police.
Mr. Manoj Ranjan Sinha, Adv. for R – 3.
Mr. V.P. Chaudhary, Sr. Adv. and Mr. Anoop Bhambhani, amicus curiae.
Mr. Kanwal Chaudhary, Adv. for New India Assurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for National Insurance Co. Ltd.
Ms. Manjusha Wadhwa and Ms. Harsh Lata, Advs. for Oriental Insurance Co. Ltd.
Mr. K.L. Nandwani and Mr. Sameer Nandwani, Advs. for Reliance General Insurance Co. Ltd.
Mr. Atul Nanda, Adv. for Bajaj Reliance General Insurance CO. Ltd., Future Generali India Insurance Co. Ltd. and ICICI Lombard General Insurance Co. Ltd.
Ms. Shantha Devi Raman, Adv. for IFFCO Tokyo General Insurance Co. Ltd.
Ms. Anjali Bansal, Adv. for Tata AIG General Insurance Co. Ltd.
Mr. Pankaj Seth, Adv. for Royal Sundaram Alliance Insurance Co.

Ltd. and Universal Sompo General Insurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 05.11.2009

1. Over one lakh people are killed and nearly half a million are injured every year in road accidents in India. There is one accident per minute and one fatal accident every five minutes. According to survey of Central Road Research Institute, more than 90% pedestrians feel unsafe while crossing roads and they comprise more than 50% of the road victims. WHO Report predicts that by the year 2020, a major killer in India will be road accidents and will account for almost 5,46,000 deaths alone. The accident rate in India is 35 per thousand vehicles, which is the highest in the world.

2. The road users have a fundamental right to life and liberty which includes the right to safety and immediate payment of compensation in the event of unavoidable accidents. It is the duty of the State to ensure safety on roads and to ensure due process of law for expeditious payment of compensation in the event of injury or death of the road users arising out of the use of motor vehicles on the roads.

3. Sections 158(6) and 166(4) of the Motor Vehicles Act were incorporated in Motor Vehicles Act, 1988 on 14th November, 1994 by an Act 54 of 1994. The object of Section 158(6) and Section 166(4) of

the Motor Vehicles Act is to set the law relating to the payment of compensation into motion upon the report of the police as the poor and helpless victims of the road accident are ignorant of their rights. The cognizance of the claim for compensation is taken by the Claims Tribunal directly on the basis of the Accident Information Report of the police without the requirement of a separate claim petition to be filed by the claimant.

4. The Delhi Police has started compliance of Section 158(6) of the Motor Vehicles Act w.e.f. 8th June, 2009 after the order of this Court. However, there has been no compliance during the period 14th November 1994 up to 7th June, 2009 which has caused grave prejudice to the victims of the road accident. Many of the victims of the road accidents during the period 1994-2009 have filed the cases before the Claims Tribunals which have already been decided and no action is required in respect of those cases. There is second category of victims of the road accidents who being ignorant of their rights have not filed the claim petitions before the Claims Tribunals. It is very difficult to trace out such victims and no action is proposed in respect of the second category of cases at this stage. There is third category of cases where the victims of the road accidents during the period 1994-2009 have filed cases before the Claims Tribunals but the cases are pending for services of the owner, driver and/or eye-witnesses and non-production of relevant documents. This Court is

of the opinion that Delhi Police should effect the service of summons on unserved owner, driver and eye-witnesses, produce the relevant documents and also file report under Section 158(6) of the Motor Vehicles Act in such pending cases. The Delhi Police is, therefore, directed to carry out the following actions relating to the pending cases:-

(i) The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14th November, 1994.

(ii) The Delhi Police shall collect the list of all pending cases filed after 14th November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.

(iii) The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal.

(iv) The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/post mortem report, site plan, driving licence,

registration cover, Insurance policy, fitness, permit, etc. at the time of hearing of the cases before the Claims Tribunal.

(v) The Delhi Police has already deputed a Naib Court with every Claims Tribunal. The Naib Court shall remain present at the time of hearing of all the cases and the Claims Tribunal shall pass the appropriate order for filing of the report under Section 158(6), service of the owner, driver and eye-witness or production of documents as the case may be. The copy of such orders shall be given dasti to Naib Court whereupon the Naib Court shall note down the next date of hearing of the cases, coordinate with the concerned Police Stations and provide the status report of those cases to the Court on the next date of hearing. The compliance of this order shall be done by Delhi Police in a phased manner.

(vi) In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACsP in terms of order dated 8th June, 2009.

5. The learned counsels for the Insurance Companies submit that the Delhi Police is not fully complying with the requirements of

Section 158(6) of the Motor Vehicles Act and in most of the cases, the requisite documents are not being furnished to the Insurance Companies. The learned counsels for the Insurance Companies further submit that wherever the documents are being furnished along with the AIR, they do not bear the seal of the Delhi Police and Delhi Police may be directed to put the seal on the said documents for the purpose of authenticity. On the other hand, the DCP (Hqrs.) of Delhi Police present in the Court submits that the Delhi Police is complying with all the requirements of Section 158(6) of the Motor Vehicles Act. The learned counsels for the Insurance Companies further submit that the password of the website of Delhi Police has not been provided to them and, therefore, they are not able to assess the information available on the website.

6. The learned Addl. Standing Counsel for Delhi Police submits that all the Insurance companies had agreed to provide their official email addresses to the learned Standing Counsel within two weeks on 4th September, 2009 which is recorded in the order dated 4th September, 2009. The learned Addl. Standing Counsel submits that only New India Assurance Company Ltd. has communicated their official email address to Delhi Police, whereas the other Insurance companies have not provided their official email addresses to Delhi Police. The learned Addl. Standing Counsel further submits that the Accident Information Reports are being sent to New India Assurance

Company Ltd. by email and the password to access the website of Delhi Police has also been furnished to New India Assurance Company Ltd. It is further submitted that the other Insurance companies be directed to furnish their official email addresses. So far as password is concerned, it is submitted that the same shall be provided to the Nodal Officers of all the Insurance companies within one week. It is further submitted that the password is required only for viewing the bulk data of that particular insurance company. It is further submitted that the Accident Information Report is being regularly uploaded on the website and shortly all the documents relating to the Accident Information Reports shall also be uploaded on the website and the same can be downloaded by the claimants, insurance companies as well as the Claims Tribunals. It is submitted that the Insurance companies should view/open the website everyday for downloading the Accident Information Reports in respect of the vehicles insured with them.

7. Considering the facts and circumstances of this case, it is directed that the Joint Commissioner of Northern Range, Delhi Police shall convene a monthly meeting with the representatives of the insurance companies. All the Insurance companies shall submit their grievances relating to non-compliance of Section 158(6) of the Motor Vehicles Act in the said meeting and Delhi Police shall redress the same within a fortnight. The first meeting shall be held in the

Conference Hall of Delhi Police Headquarters, IP Estate, New Delhi on 13th November, 2009 at 4.30 PM. Each Insurance Company shall send its official representative along with one legal representative to attend the said meeting. All the insurance companies shall provide their official email address to the Joint Commissioner of Police at the time of the hearing and shall also collect their passwords. The Joint Commissioner of Police shall also provide the demonstration of the website to the representatives of the insurance companies at the time of the meeting. The date of the subsequent meetings shall be communicated by the Joint Commissioner of Police to the representatives of all the insurance companies. The insurance companies as well as Delhi Police shall submit the status report before this Court on the next date of hearing. Minutes of the monthly meeting between the Joint Commissioner of Police and the Insurance Companies be placed on record by Delhi Police and the same shall be considered by this Court.

8. Mr. Atul Nanda, Standing Counsel for Union of India submits that the copy of the order dated 25th September, 2009 has been sent to the Secretary, Ministry of Road Transport and Highways who has forwarded the same to the Expert Committee constituted by Ministry of Road Transport and Highways to review the Motor Vehicles Act, 1988 and to suggest the changes therein. Mr. Nanda submits that the Committee is considering the suggestions given by this Court

relating to the amendment of law relating to motor accident claims.

9. There are seventeen non-life Insurance Companies including four nationalized Insurance Companies out of which fourteen Insurance Companies are represented by their counsels today. There is no appearance on behalf of Sri Ram General Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd. and Raheja QBE General Insurance Co. Ltd. Court notice be, therefore, sent to the said companies for the next date of hearing. The addresses of the said companies are available in the list taken on record. Court notice be sent by ordinary process, email as well as fax.

10. Oriental Insurance Co. Ltd. and New India Assurance Co. Ltd. have filed their status report containing the information in terms of the order dated 20th October, 2009. Tata AIG General Insurance Co. Ltd., IFFCO Tokio General Insurance Co. Ltd. and National Insurance Co. Ltd. have also handed over the status reports which are taken on record. Other Insurance companies seek some more time to place their status report on record. Let the same be filed within two weeks.

11. Mr. Atul Nanda, Advocate is also representing Bajaj Reliance General Insurance Co. Ltd., Future Generali India Insurance Co. Ltd. and ICICI Lombard General Insurance Co. Ltd. and he submits that neither he nor the Companies which he represents intends to treat the present proceedings as an adversarial proceedings. Instead, it is being seen by the Insurance industry as an effort by this Court to

bring about the progressive reform in the manner in which the Motor Vehicles Act is applied to make it truly beneficial and social legislation which the law-makers intended it to be. The counsel further submits that the insurance companies have certain concerns and there are practical difficulties in the implementation of the order dated 8th June, 2009 whereby 30 days time has been fixed by this Court to process the claim. It is submitted that there are cases relating to outside Delhi as well as the driving licences issued by outside Delhi where it is not possible to complete the investigation within 30 days. Mr. Nanda suggests that the insurance Companies be permitted to deliberate upon the mechanism which shall be submitted to this Court for consideration which will ensure that the official mechanism put in place by this Court is a product of consensus rather than judicial direction and would lead to speedy implementation without there being any further delays.

13. Considering the submissions made by the learned Standing Counsel for Union of India and the Counsel for Insurance Companies, a Committee is constituted to deliberate upon the mechanism for a time bound settlement of motor accident claims. Considering that it is duty of the State to ensure that a due process of law including a mechanism and time frame should be evolved, the Committee shall comprise of Secretaries or their nominees from Ministry of Road Transport and Highways, Ministry of Finance (Department of

Insurance) and Ministry of Law and Justice, Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to review the provisions of the Motor Vehicles Act, 1988 and Joint Commissioner of Northern Range, Delhi Police. Mr. Atul Nanda, the Standing Counsel of Union of India shall be the convener of the Committee. The Insurance Companies shall depute one senior officer each, preferably the General Manager or high rank officer to attend the meeting. The committee may also invite the representatives from IRDA and Tariff Advisory Committee, if some assistance is required from them. The Committee shall complete the deliberations within a period of two weeks and submit a report to this Court with advance copy to the learned amicus curiae who may submit their response to this Court on the next date of hearing. The first sitting of the Committee shall be taken place on 11th November, 2009 at 5:00pm at the venue to be fixed by the Convener.

14. All the Insurance Companies agree to the constitution of the Committee to evolve the mechanism and time frame to settle the accident claims and submit to the jurisdiction of this Court to pass an appropriate order after the report of the Committee.

15. The period of 30 days fixed in the order dated order 8th June, 2009 for processing the motor accident claims for the time being is extended up to 60 days wherever the accident, driving licence, permit, evidence and other documents relate to Delhi and 90 days

where the documents relate to outside Delhi. However, final order in this regard shall be passed after the report of the Committee.

16. The Insurance Companies have not been settling the claims of the victims of the road accidents on the ground that there is no notice/intimation of the road accidents to them until the receipt of notice from the Claims Tribunal. However, with the enforcement of Section 158(6) of the Motor Vehicles Act by Delhi Police in terms of the order dated 8th June, 2009, the Insurance Companies now have sufficient notice of the claim and they can verify the facts to settle the claims. As per the Procedural Manual of Motor Accident Claims of the Insurance Companies, they are required to appoint an Investigator immediately upon the receipt of intimation of the claim and verify all relevant facts relating to the accident and computation of compensation such as age, income and number of dependants in death cases and age, income and nature of injuries and expected expenditure in injury cases. It is further provided that upon verification of all the facts, the Insurance Company must determine the amount of compensation payable in accordance with law and offer the same to the claimants for settlement of the claim. In order to streamline the system, it is directed that henceforth immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that

claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award. With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies are directed to appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned order in writing about the amount payable in accordance with law. The order of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the order of the designated officer. Where no defence is available to the Insurance Company, the admitted amount so determined shall be deposited by the Insurance Company with the learned Tribunal along with the aforesaid order by means of a fixed

deposit receipt in the name of the Insurance Company with instructions to the bank to release the interest to the claimants as per the order of the learned Tribunal.

17. The Delhi Government in pursuance to the directions of this Court have notified the Delhi Motor Accident Claims Tribunal Rules, 2008 on 13th July, 2009. The Delhi Motor Accident Claims Tribunal Rules, 2008 have very benevolent features. The salient features of the said Rules are under:-

> **"I. <u>RULE 3 – DUTIES OF INVESTIGATING POLICE OFFICER IN MOTOR ACCIDENT CASES</u>**
>
> (i) To take photographs of the scene of the accident and prepare a site plan.
>
> (ii) Seizure of Insurance Policy and other documents as mentioned in Section 158(1) of the Motor Vehicles Act.
>
> (iii) Verification of genuineness of the aforesaid documents by obtaining confirmation from the concerned offices/authorities.
>
> (iv) Submission of Accident Information Report in Form 'A' within 30 days of receipt of the notice in Form 'B' accompanied by requisite documents including the Report under Section 173 Cr.P.C., medico legal certificate, post-martem report, first information report, photographs, site plan, photocopies of relevant documents mentioned in Clause (c) and report regarding confirmation of genuineness of the documents.
>
> (v) Furnishing of Accident Information Report and particulars in Form 'A' within 30 days to the claimants.
>
> (vi) Impounding uninsured offending vehicles and not to release the same as well as vehicles in respect of which the owner fails to furnish the Insurance Policy.

(vii) Prosecute the owner of the uninsured offending vehicles under Section 196 of the Motor Vehicles Act.

II. RULE 4 – DUTIES OF REGISTERING AUTHORITY

(i) To submit the detailed report in Form 'D' to the Claims Tribunals regarding the offending vehicle involved in the accident or the licence of the driver within 15 days of the receipt of the application in Form 'E'

(ii) Furnishing of the requisite information in Form 'D' within 15 days of receiving the application in Form 'F' from the claimant and the insurance company.

III. RULE 5 – DUTIES OF INSURANCE COMPANY

The Divisional Manager of the Insurance Company shall be responsible for the following duties:-

(i) Apply for relevant information in Form 'C' to the Investigating Officer of Police after receiving the accident information

(ii) Verification of the insurance of the offending vehicle and to confirm the same to the Claims Tribunal within 30 days on receiving the notice of the claim case.

(iii) Apply for relevant information in Form 'F' to the registering authority.

(iv) Deposit the amount of 'no fault liability' under Section 140 of the Motor Vehicles Act with the Claims Tribunal along with the written statement.

IV. RULE 6 – PROHIBITION AGAINST RELEASE OF MOTOR VEHICLE INVOLVED IN ACCIDENT

The uninsured motor vehicles involved in the accident and the vehicles in respect of which registered owner fails to furnish copy of the insurance policy despite demand by the investigating officer not to be released by any Court unless the registered owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in the motor accident claims.

On the expiry of three months of the seizure of the aforesaid vehicle, the motor vehicle shall be sold in public auction by the Magistrate and the proceeds thereof shall be deposited with the Claims Tribunal within 15 days to be adjusted against the award.

V. RULE 7 – PRESUMPTIONS ABOUT REPORT

The contents of the report submitted by Investigating Officer of the Police in Form 'A' and 'D' and the registering authority and the confirmation by Insurance Company under Rule 5(b) shall be presumed to be correct and shall be read in evidence without formal proof till proved to the contrary.

VI. RULE 8 – APPLICATIONS TO THE CLAIMS TRIBUNAL

(i) Every application to be in Form 'G'

(ii) The claim application to be accompanied by an affidavit of the claimant.

(iii) To disclose an affidavit whether the applicant had earlier preferred any claim petition with respect to the same cause of action.

(iv) The claim application shall be accompanied by the following:-

(a) All relevant documents.
(b) Proof of identity of the applicant(s)
(c) Passport size photograph(s) of the applicant(s) duly attested by the Advocate on record.
(d) Reports from the Police and the registering authority in Forms 'C' and 'D'.
(e) Medical Certificate of injuries.

(v) The Claims Tribunal may also require the applicant to furnish the following information.

(a) Full particulars of all earlier accidents.

(b) Amount of compensation paid in earlier accidents.

(c) Name and particulars of the victim and of the person who paid the damages.

(d) connection of the aforesaid persons with the claimant.

VII. <u>RULE 9 – POLICE REPORTS UNDER SECTION 158(6) OF THE MOTOR VEHICLES ACT.</u>

(i) Accident Information Report to be in Form 'A'.

(ii) Claims Tribunal may call for further information from the Police.

(iii) Claims Tribunals shall register the case on receipt of the Accident Information Report and issue notice of appearance to all parties concerned including claimant, owner, driver and insurer of the offending vehicle in Form 'H'.

(iv) If the claimant fails to appear in response to the notice, the Tribunal shall close the case.

(v) If the claimant has filed an independent claim, the Accident Information Report shall be tagged with the same. If no independent claim has been preferred, the Tribunal shall call upon the claimant to submit statement of facts regarding compensation in Form 'G'.

VIII. <u>Rule 10 – Examination of applicant</u>

On receipt of application under Rule 8, the Claims Tribunal may examine the applicant on oath. The object of this examination is to elucidate the material information required for effective adjudication of the claim, which might include confirmation of the identity of the party, confirmation about the fact that all legal heirs have been made party.

IX. <u>Rule 14 – Proceedings after appearance of respondents</u>

(i) The respondents to file written statement(s) along with all the documents and also affidavit in support of all facts.

(ii) If no written statement is filed, the Claims Tribunal must mandatorily examine the respondent and

record the substance of the said examination in writing.

X. Rule 15 – Local Inspection

The Claims Tribunal is empowered to visit the site of accident for local inspection but in such event, must prepare a brief memorandum of facts observed, making it part of the record.

XI. Rule 16 – Inspection of Vehicle

The Claims Tribunal may require production of the vehicle involved in the accident for inspection.

XII. Rule 18 – Power to direct medical examination

(i) The Claims Tribunal may issue a direction in Form "J" to any Medical Officer or any Board of Medical Officers of a government or municipal hospital to examine the injured and give opinion indicating the degree and extent of disability, if any suffered.

(iii) The rule renders it a duty on the part of such Medical Officer or Board to submit the report within 15 days of receipt of direction.

XIII. Rule 20 – Procedure for adjudication of claim on the basis of "No Fault Liability"

(i) Application for claim based on "No Fault Liability" to be in Form "G".

(ii) Such application cannot be rejected on account of technical flaws and is to be decided through summary procedure.

(iii) If the application is not accompanied by report of investigating police officer (in Form "A") and report of the registering authority (in Form "D"), the Claims Tribunal shall obtain the requisite information from concerned authorities.

(iv) It is further the duty of the Claims Tribunal to expeditiously decide such application, if necessary

by insisting on early certification about degree and extent of disability, if any, by recourse to Rule 18.

(v) Claims Tribunal is required to issue directions for apportionment and securing the interest of the claimants in the interim award.

XIV. <u>Rules 21 to 24 – Inquiry into the Claim</u>

(i) The Claims Tribunal is required to frame issues arising out of pleadings.

(ii) The Claims Tribunal is required to expedite the inquiry for determination of issues by allowing:

(a) Cross examination of each party by the opposite party on the affidavits filed with the pleadings.

(b) Cross examination of the witnesses whose affidavits were filed by the parties with the pleadings.

(c) Permitting additional evidence in the form of affidavits only of such witnesses whose affidavits could not be filed earlier despite exercise of due diligence or on account of ignorance.

(iii) Record the statement of each witness in the form of a brief memorandum of the substance of statement given.

XV. <u>Rule 27 – Securing the interest of claimants</u>

(i) The Claims Tribunal is required to issue directions about securing the interest of the claimants in whose favour lump sum amount has been awarded but whose interest on account of disability etc. need to be protected.

(ii) In issuing directions for securing the interest of the claimants, the Claims Tribunal shall have regard for the welfare of the injured or the heirs of the deceased.

(iii) Rule 27 elaborately deals with the cases of minors, illiterate claimants, semi-literate claimants and even literate claimants.

XVI. Rule 31 – Enforcement of the Award

The Claims Tribunal has been vested with all the powers of a Civil Court in execution of decree for enforcement of the award.

XVII. Rule 32 – Powers of Civil Court

The Claims Tribunal has been vested with all the powers of the Civil Court for discharging its functions."

18. Copy of this order along with the Delhi Motor Accident Claims Tribunal Rules, 2008 be sent to the Secretary, Ministry of Road Transport and Highways as well as to the Chairman of the Expert Committee appointed by the Ministry to review the Motor Vehicles Act to consider the inclusion the appropriate provisions in the Central Rules. The copy be sent through Mr. Atul Nanda, Standing Counsel for Union of India.

19. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

20. Copy of this order be sent to Claims Tribunals for compliance. The compliance report in respect of the directions passed today regarding the enforcement of Section 158(6) of the Motor Vehicles Act, 1988 for the period 1994 to 2009 be filed by the Claims Tribunals through the Registrar (Appellate) before the next date of hearing.

21. Renotify for 10th December, 2009 at 2:30pm.

J.R. MIDHA, J

NOVEMBER 05, 2009
aj

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 842/2003

% Date of Decision: 16th December, 2009

RAJESH TYAGI & ORS. ..... Appellants
Through : None.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Gopal Subramaniam,
Solicitor General of India with
Mr. Atul Nanda Standing.
Counsel for Union of India.
Mr. Vikas Pahwa, Additional
Standing Counsel for Delhi
Police.
Mr. V.P. Chaudhary, Sr. Adv. and
Mr. Anoop Bhambhani, amicus
curiae.
Mr. Arun Mohan, Sr. Adv. and
Ms.Rajdeepa Behura, Adv. as
Members of the Committee
appointed by the Court.
Mr. Manoj Ranjan Sinha, Adv.
for R – 3.
Mr. Kanwal Chaudhary, Adv.
for New India Assurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for
National Insurance Co. Ltd.
Ms. Manjusha Wadhwa and
Ms. Harsh Lata, Advs.
for Oriental Insurance Co. Ltd.
Mr. K.L. Nandwani and
Mr. Sameer Nandwani, Advs. for
Reliance General Insurance Co. Ltd.
Mr. Atul Nanda, Adv. for
Bajaj Reliance General Insurance
CO. Ltd., Future Generali India
Insurance Co. Ltd. and ICICI
Lombard General Insurance Co.
Ltd.

Ms. Shantha Devi Raman, Adv. for IFFCO Tokyo General Insurance Co. Ltd.
Ms. Anjali Bansal, Adv. for Tata AIG General Insurance Co. Ltd.
Mr. Pankaj Seth, Adv. for Royal Sundaram Alliance Insurance Co. Ltd. and Universal Sompo General Insurance Co. Ltd.
Mr. Sunil Kapoor and Mr. Anurag Sharma, Advs. for HDFC Ergo General Insurance Co. Ltd.
Ms. Suman Bagga, Adv. for Cholamandalam.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

JUDGMENT (Oral)

1. Mr. Vikas Pahwa, the learned Additional Standing Counsel for Delhi Police submits that the Delhi Police has issued a circular dated 22nd July, 2009 to all Deputy Commissioners of Police instructing them to strictly implement the duties of the police under Section 158(6) of the Motor Vehicles Act, 1988 and Delhi Motor Accident Claims Tribunal Rules, 2008. The learned Additional Standing Counsel submits that the Claims Tribunal Agreed Procedure formulated by

the Committee appointed by this Court imposes additional duties on the police which are beyond the scope of the Motor Vehicles Act, 1988 as well as Delhi Motor Accident Claims Tribunal Rules, 2008. The learned Additional Standing Counsel, in particular, refers to Clauses 3(B)(i)(ii) and 3(3) of the Claims Tribunal Agreed Procedure under which the Police has to collect the proof of age and income of the deceased in the case of death, proof of the medical bills and expenses in the case of injuries and has also to verify the genuineness of the said documents. The learned Additional Standing Counsel submits that it is not the legal duty of the Police to collect the said evidence and to verify the genuineness of the same. The learned Additional Standing Counsel further submits that in case of hit and run accidents, it may not possible to complete the investigation within a period of 30 days as provided in Clause 4 of the Claim Tribunal Agreed Procedure. It is further submitted that at times, the MLC and post-mortem report are not made available to them within 30 days of the accident.

2. Mr. Atul Nanda, the learned Standing Counsel for Union of India submits that all the seventeen Insurance Companies have agreed to settle the accident cases as per the Claims Tribunal Agreed Procedure. It is further submitted that the Insurance Companies instead of relying on the report of their Investigator, would prefer to rely on the report of a police officer who is a public servant and is

accountable for his report. It is submitted that the Insurance Companies have taken a big step forward by agreeing to a new mechanism for payment of compensation to the victims of the road accident within a fixed time frame and the police should also show the grace to agree to perform an additional duty to serve the society. It is further pointed out that the additional duties to be performed by the police are not such that it will increase the burden on the police. The Police while conducting the investigation, can easily collect some more documents and information.

3. Mr. Arun Mohan, Senior Advocate and member of the Committee appointed by this Court vide order dated 3.12.2009 in MAC.APP.No.236/2009 and MAC.APP.238/2009 submits that pending examination of the contentions raised by the Delhi Police as to their duties under the Motor Vehicles Act, 1988, the Delhi Motor Accident Claims Tribunal Rules, 2008 and otherwise in law, the Claims Tribunal Agreed Procedure may be implemented by the Insurance Companies and Delhi Police for a period of six months on trial basis as a pilot project.

4. The learned Additional Standing Counsel for Delhi Police on instructions from Mr. Manjesh Kashyap, DCP (Hqrs.), Delhi Police who is present in the Court and has taken instructions from the

Commissioner of Police during the hearing of this case, submits that Delhi Police is agreeable to implement the Claims Tribunal Agreed Procedure on a trial basis as a pilot project for a period of six months without prejudice to the contentions raised before this Court today.

5. The Claims Tribunal Agreed Procedure formulated by the Committee of the Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law, Justice and Company Affairs; and Joint Commissioner of Police (Northern Range) is accepted subject to the following:-

(i) The Investigating Officer of the Police shall intimate the factum of the accident to the Claims Tribunals within 48 hours of the accident. If the insurance particulars are available by that time, the Investigating Officer shall also send the intimation to the concerned Insurance Company by e-mail. The factum of the accident shall also be uploaded by Delhi Police on its website. The intimation of the accident shall contain all relevant particulars including the date, time and place of accident, registration number of the offending vehicle, policy particulars, names and addresses of the owner and driver of the offending vehicle and the name and mobile number of the Investigating Officer.

(ii) Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Detailed Accident Report by the police.

(iii) The Investigating Officer of Police shall collect the relevant evidence relating to the accident as well as the computation of compensation. The Investigating Officer shall take photographs of the scene of the accident from all angles. In the case of death, the Investigating Officer shall collect the proof of age, occupation, income of the

deceased and number of legal representatives of the deceased. In the case of injuries, the Investigating Officer shall collect proof of injuries suffered and expenses incurred by the injured. The Investigating Officer shall also collect the relevant documents including driving licence, registration certificate, fitness and permit of the offending vehicle, death certificate, post mortem report, birth certificate, salary slip, certificate of the employer, Income-tax returns, MLC, prescription slips, bills for medical expenses and shall also verify the genuineness of the said documents.

(iv) The Investigating Officer shall file a Detailed Accident Report (DAR) with the Claims Tribunal within 30 days of the accident. The Detailed Accident Report shall be accompanied by the report under Section 173 Cr.P.C., FIR, MLC, Post Mortem Report, photographs, site plan, mechanical inspection report, seizure memo, death certificate, proof of age, occupation and income of the deceased and age of the legal representatives of the deceased in the case of death, proof of injuries and expenses in the case of injuries along with affidavit about the verification of the said documents. Copy of the Detailed Accident Report shall simultaneously be furnished to the Insurance company as well as to the claimants.

(v) The Investigating Officer of the Police shall also furnish a copy of Detailed Accident Report along with complete documents to Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Courts, New Delhi. Delhi Legal Services Authority shall examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimants in accordance with law.

(vi) Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is

undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

(vii) The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Detailed Accident Report. However, if the Police is unable to produce the owner, driver, clamant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Detailed Accident Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

(viii) The concerned Registration Authority of the Government of NCT of Delhi shall furnish the report in Form-D of the Delhi Motor Accident Claims Tribunal Rules, 2008 to the Police and Claims Tribunal within 15 days of the receipt of the request from the police or the direction from the Tribunal in Form-E. The Registration Authority shall also assist the Police in verification of the documents.

(ix) The Claims Tribunals shall examine whether the Detailed Accident Report is complete in all respects and shall pass appropriate order in this regard. If the Detailed Accident Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

(x) The Claims Tribunals shall treat the Detailed Accident Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Detailed Accident Report as a miscellaneous application which shall be registered as a

main claim petition after the appearance of the claimants.

(xi) The Claims Tribunal shall grant 30 days time to the Insurance Company to examine the Detailed Accident Report and to take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The Designated Officer of the Insurance Company shall place the written reasoned decision before the Claims Tribunal within 30 days of the date of complete Detailed Accident Report.

(xii) The compensation assessed by the Designated Officer of the Insurance Company in his written reasoned decision shall constitute a legal offer to the claimants and if the claimants accept the said offer, the Claims Tribunal shall pass a consent award and shall provide 30 days time to the Insurance Company to make the payment of the award amount. However, before passing the consent award, the Claims Tribunal shall ensure that the claimants are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the shares of the claimants and the mode of disbursement.

(xiii) If the claimants are not in a position to immediately respond to the offer of the Insurance Company, the Claims Tribunals shall grant them time not later than 30 days to respond to the said offer.

(xiv) If the offer of the Insurance Company is not acceptable to the claimants or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act and shall pass an award within a period of 30 days thereafter.

6. Mr. Atul Nanda, Convener of the Committee appointed by this Court vide order 5th November, 2009 is directed to incorporate the aforesaid Clauses in Claims Tribunal Agreed Procedure and place the

same before this Court on 21st December, 2009.

7. While computing the compensation in respect of death cases, the learned Tribunals shall, so far as possible, compute the compensation payable to the legal representatives of the deceased victim according to the principles laid down by the Hon'ble Supreme Court in the case **Sarla Verma Vs. DTC, 2009 (6) SCALE 129** which are reproduced hereunder:-

I. MULTIPLIER

Age of the deceased (in years)	**Multiplier**
15 – 20	18
21 – 25	18
26 – 30	17
31 – 35	16
36 - 40	15
41 - 45	14
46 - 50	13
51 - 55	11
56 – 60	09
61 - 65	07
Above 65	05

(Where the deceased was unmarried, the multiplier to be adopted according to the age of the parents)

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

(i) Deduction towards personal expenses. : 1/2 (50%)

(ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

Deceased – married

(i)	2 to 3 dependent family members.	:	1/3rd
(ii)	4 to 6 dependent family members.	:	1/4th
(iii)	More than 6 family members	:	1/5th
(iv)	Subject to the evidence to the contrary.	:	Father, brother and sisters will not be considered as dependents.

III. <u>FUTURE PROSPECTS</u>

(i)	Permanent job below 40 years of age	:	Actual salary – tax + 50% towards future prospects.
(ii)	Permanent job between 40 – 50 years	:	Actual salary – tax +30% towards future prospects.
(ii)	More than 50 years with: permanent job.		Actual salary only. No addition for future prospects.
(iv)	Deceased employed at a fixed salary (without provision for annual increments)	:	Only actual income to be taken. No addition.
(v)	Departure from this Rule	:	Only in rare and exceptional cases involving special circumstances.

IV. <u>NON-PECUNIARY DAMAGES</u>

(i)	Compensation for loss of estate	:	Rs.5,000/- to Rs.10,000/-
(ii)	Compensation for loss of consortium	:	Rs.5,000/- to Rs.10,000/-
(iii)	Compensation for pain and sufferings and hardship	:	Nil
(iv)	Funeral expenses, cost of transportation of body and medical expenses"	:	Actual

8. Where the legal representatives of the deceased victim do not have documentary evidence of the income of the deceased, the Claims Tribunal shall take the minimum wages into consideration

and shall take judicial note of the increase in minimum wages due to inflation and rise in price index and compute the income of the deceased by taking the average of the minimum wages and its double following the judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182; Lekh Raj vs Suram Singh, 2007 ACJ 2165; and National Insurance Company Limited vs. Renu Devi III (2008) ACC 134.**

9. In the case of death of a child, the Claims Tribunal shall consider the principles laid down by this Court in the case of National Insurance Co. Ltd. Vs. Farzana, MAC.APP.13/2007 decided on 14.7.2009 following the judgments of the Hon'ble Supreme Court in the cases of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257 and R.K. Malik Vs. Kiran Pal, III (2006) ACC 261,** according to which the following compensation is payable:-

Compensation for loss of dependency	Rs.2,25,000/-
Compensation for loss of future prospects	Rs. 75,000/-
Non-pecuniary compensation	Rs. 75,000/-
Total	Rs.3,25,000/-

10. The Delhi Police shall require some time for implementation of the Claims Tribunal Agreed Procedure. The Delhi Police shall have to create the paraphernalia, select the officers and provide them training and mobile phones to take photographs of the site of the accident.

11. It is agreed by the Delhi Police that the implementation of

Claims Tribunal Agreed Procedure shall commence from 15th January, 2010 and the same shall tentatively remain in force for a period of six months up to 14th July, 2010. The Claims Tribunal Agreed Procedure shall apply to all accidents which occur after 15th January, 2010 and shall cover the accidents which occur up to 14th July, 2010.

12. The learned Additional Standing Counsel for Delhi Police submits that if some difficulties arise in the implementation of this scheme during this period of six months, this Court shall be approached for suitable modification. It would, therefore, be appropriate that the working of the Claims Tribunal Agreed Procedure be monitored by the Committee appointed by this Court vide order dated 5th November, 2009 which has formulated the Claims Tribunal Agreed Procedure. The monthly report be submitted by all the Insurance Companies as well as by the Police before the said Committee, which shall submit the same before this Court along with its comments within 15 days thereafter. The first status report by the Insurance Companies and the Delhi Police for the period 15th January, 2010 to 14th February, 2010 shall be submitted to the Committee by 28th February, 2010 and the Committee shall examine the same and submit their report before this Court by 15th March, 2010 and the same shall be considered by this Court on 23rd March, 2010.

13. Mr. Arun Mohan, Senior Advocate has some suggestions for

the Delhi Police for expeditious investigation of the accident cases. The suggestions of Mr. Arun Mohan are as under:-

First : "Today, there are more drivers on the road carrying a mobile phone than perhaps those carrying a (genuine) driving licence. This phenomenon can be utilised for the purposes of investigation of motor accidents.

The Police Control Room can set up a Cell for Accident Identification with a dedicated telephone number (having several lines) to which the Investigating Officer deputed to investigate an accident upon reaching the spot can make calls and it would register the number from which the calls are coming and the time as part of its call listing of received calls.

Upon reaching the spot, the Investigating Officer (or the PCR Van) should take possession of the mobile phones of all concerned – driver, occupant/s, victim/s. Thereupon the Investigating Officer should make calls to the aforesaid designated police telephone number in the following order:

1. from his own (Investigating Officer's) mobile phone;
2. from the driver's mobile (If the driver is carrying more than one mobile phone, such phone calls be made from each of the phones.);
3. from the mobile phones of the occupant/s of the car; and
4 from the victim's mobile phone.

After these calls, there be another call from the Investigating Officer's mobile phone to this number to signify the end of series. Appropriate system to bunch these calls can be easily engineered. The necessary information (call details) can then be transferred to the electronic case file which is opened for the particular accident.

To be doubly sure, the Investigating Officer may also call his own number from the driver's mobile phone. If no number is displayed, the Investigating Officer ought to seize the mobile phone.

Identification of the mobile phones in use at the time of the accident and accessibility through the service provider to driver's (and others') location and call listings for the preceding period will give law enforcement a much stronger hand. And more importantly, prevent false claims when there has not been any accident or injury.

Second: An Insurance Company must know about an accident immediately upon its occurrence so that it can make the necessary investigations. Presently, the insurance company comes in picture when the claim petition is filed and by that time the evidence can be created to convert a non-motor accident (or even

a non-accident) into a motor accident. Evidence is also created of income levels so as to inflate the quantum.

As a solution to this, the Delhi Police needs to create a Website to which the Investigating Officer in the field can connect and so can insurance companies from their own computers.

The 'information' sent by the Investigating Officer to this Website – preferably on an electronic interactive form – will include details such as: motor vehicle registration number, chassis number, engine number, vehicle make, model, colour, type, etc; particulars of the owner such as his address, mobile telephone, occupation, etc.; driver's registered address and driving licence number; the police station within the jurisdiction of which the accident took place; description of the spot where the accident occurred; the other persons involved in the accident; brief cause of the accident; casualties occurred; insurance policy number; particulars of the insurance company, etc. Only as many as are available at that time can be filled in.[1] The Investigating Officer's mobile number and e-mail will also be entered.

Once the police starts placing this information on the web (which it can do virtually automatically within one hour of the accident) along with the time and location, and name of the insurance company (even two or three names may be given), the insurance company/ies can download this data (every hour) and search through their own database. The moment there is any matching / flagging, it can revert to the concerned Police Station on e-mail and to the Central Office, and even to the Investigating Officer.

Most of this exercise can be done by the computers automatically which (in absence of exact match) will give out (display) even particulars of similar vehicles in respect of which policies have been issued. So done, there is no reason why within a few hours of the accident, the insurance file cannot be reached and contact with the Investigating Officer made. The insurance companies can then depute their own field-agent to join in the investigations.

The insurance companies will have to fine-tune their own database of the policies which they have issued so that the necessary search and correlation can be made almost instantaneously. The idea is that in this computer day and age, the insurance companies must perform their task with diligence, and in the shortest of time get in touch with the AIO. Thus, the insurer has no longer to wait for summons from the MACT to know of the accident.

Third : The Delhi Police needs to prepare and make available to all Investigating Officers:

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1 ? Computer matching enables a few fields to be filled in and then it automatically shows up reasonably complete groups / fields (as suggestions / options) which include what was a possible error in the original keying-in.

1 Motor Accident Investigation Manual;

2 Comprehensive set of questionnaire forms; and

3 Instruction notes (as leaflets) for use of victims / witnesses,

which the Investigating Officer can use for gathering information on the spot and even distributing (the forms and notes) to the victims / witnesses, and receiving information from them.

More importantly, the Investigating Officer must also bestow some attention on what could have prevented the accident and prepare a note to that effect for being filed with the Central Office.

Lastly (Fourth) The police could consider making available web-connected mobile phones with camera which can take photographs of the vehicle, number-plate, chassis-number-plate, driver, victim and electronically transmit these to the Central Police website / computer.

Ideally, alongside recording the statement of the witnesses in the case diary (under Section 161 Cr.P.C., these can be video-recorded at the site, and the CD preserved as part of the case file.

In future, we can have palm tops to scan the licence and thumb impression of the driver as also the thumb impression of the victim/s together with high resolution photographs and automatic GPS based location marker and time print.[2]

14. The aforesaid four suggestions of Mr. Arun Mohan, Senior Advocate are very useful and there should be no difficulty in implementation of the first three suggestions; though the fourth suggestion may have to await action by the Government.

15. Mr. Arun Mohan has offered to provide the basic structure of the forms which can then be developed by the Delhi Police and be made part of the manual. The Delhi Police may also consult Mr.Arun Mohan and the other members of the Committee for drafting the manual.

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[2] ? also stated as latitude and longitude as degrees, minutes and seconds

16. The learned Additional Standing Counsel for Delhi Police submits that the Delhi Police shall favourably consider the above suggestions and shall incorporate them in their training to the Investigating Officers.

17. The Delhi Police shall prepare a Motor Accident Investigation Manual which shall incorporate the suggestions given by Mr.Arun Mohan and shall place the same before this Court.

18. It is hoped that the implementation of the Claims Tribunal Agreed Procedure will start a new era in road accident prevention, investigation and compensation. The successful implementation of the Claims Tribunal Agreed Procedure shall result in payment of compensation to the victims of the road accidents within 120 days of the date of the accident. However, the success of the Claims Tribunal Agreed Procedure shall depend upon the implementation of the scheme by the Delhi Police, Insurance Companies, Claims Tribunal and Delhi Legal Service Authority in its true letter and spirit. The Commissioner of Delhi Police shall personally look into the selection of good officers and proper training to them to ensure that there is no exploitation of the victims of the road accidents. The list of the officers responsible for implementation of this Scheme be placed before this Court on 8th January, 2010. All Insurance Companies shall appoint a Nodal Officer with adequate knowledge of the principles

for computation of compensation for successful implementation of this Scheme. The list of Nodal Officers be placed before this Court on 8th January, 2010. The Claims Tribunals and Delhi Legal Services Authority shall ensure that just compensation is paid to the victims of the road accidents within agreed time frame and the quality of justice is not compromised.

19. Union of India as well as Government of NCT of Delhi are directed to issue appropriate directions to their respective hospitals instructing them to issue MLC and Post Mortem Report within 15 days of the accident in respect of the accidents in Delhi between 15th January, 2010 and 14th July, 2010. Government of NCT of Delhi shall also issue directions to the registration authorities in terms of the para 5(viii) above.

20. Mr. Gopal Subramaniam, Solicitor General of India has, on being requested, assisted this Court in arriving at an amicable solution for implementation of a time bound procedure for settlement of Motor Accident Claim cases for a period of six months as a pilot project. The learned Solicitor General has also submitted that Central Government shall consider granting of funds to the Delhi Police for creating special cell and paraphernalia for handling of motor accident cases on request being made by Delhi Police to the Central Government in this regard.

21. The Ministry of Finance (Department of Insurance), Delhi Police and all the Insurance Companies shall also consider giving appropriate publicity to this scheme to bring awareness to the general public who can take the benefit of the same. The Director (Insurance) shall also consider nominating an officer for due compliance of this scheme by all concerned.

22. The Claims Tribunal Agreed Procedure along with the copy of this order be sent to all Claims Tribunals through the Registrar (Vigilance) of this Court.

23. Copy of this order be also sent to Delhi Legal Services Authority. Delhi Legal Services Authority shall take steps to familiarize the public about this scheme.

24. Copy of this order be sent to the Secretary, Ministry of Road Transport and Highways as well as the Expert Committee appointed by the Ministry of Road Transport and Highways, through Mr. Atul Nanda, Standing Counsel for Union of India. The Expert Committee may consider incorporating this Scheme in their report to the Government.

25. Copy of this order be sent to the Secretary, Ministry of Health of the Central Government as well as Government of NCT of Delhi through their respective Standing Counsels for issuance of appropriate instructions to their respective hospitals.

26. Copy of this order be given Dasti to the learned amicus curiae,

members of this Committee and the counsels for the Insurance Companies.

J.R. MIDHA, J.

DECEMBER 16, 2009
aj

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO No.842/2003

Date of Decision: 21st December, 2009

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RAJESH TYAGI & ORS. ..... Appellants
Through : None.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Atul Nanda Standing.
Counsel for Union of India.
Mr. Vikas Pahwa, Additional Standing Counsel for Delhi Police.
Mr. V.P. Chaudhary, Sr. Adv. and Mr. Anoop Bhambhani, amicus curiae.
Mr. Arun Mohan, Sr. Adv. and Ms.Rajdeepa Behura, Adv. as Members of the Committee appointed by the Court.
Mr. Manoj Ranjan Sinha, Adv.
for R – 3.
Mr. Kanwal Chaudhary, Adv. for New India Assurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for National Insurance Co. Ltd.
Ms. Manjusha Wadhwa and Ms. Harsh Lata, Advs.
for Oriental Insurance Co. Ltd.
Mr. K.L. Nandwani, Adv. for United India Insurance Co. Ltd.
Mr. Sameer Nandwani, Adv. for Reliance General Insurance Co. Ltd.
Mr. Atul Nanda, Adv. for Bajaj Reliance General Insurance CO. Ltd., Future Generali India Insurance Co. Ltd. and ICICI Lombard General Insurance Co. Ltd.
Ms. Shantha Devi Raman,

Adv. for IFFCO Tokyo General Insurance Co. Ltd.
Ms. Anjali Bansal, Adv. for Tata AIG General Insurance Co. Ltd.
Mr. Pankaj Seth, Adv. for Royal Sundaram Alliance Insurance Co. Ltd. and Universal Sompo General Insurance Co. Ltd.
Mr. Sunil Kapoor and Mr. Anurag Sharma, Advs. for HDFC Ergo General Insurance Co. Ltd.
Ms. Suman Bagga, Adv. for Cholamandalam.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	YES
2.	To be referred to the Reporter or not?	YES
3.	Whether the judgment should be reported in the Digest?	YES

JUDGMENT (Oral)

1. The Claims Tribunal Agreed Procedure formulated by the Committee of the Secretaries/nominees of the Ministries of Road Transport and Highways; Finance (Department of Insurance); Law, Justice and Company Affairs; and Joint Commissioner of Police (Northern Range), to which all the Insurance Companies have consented, has been accepted by this Court vide order dated 16th December, 2009. The Delhi Police has given their consent to implement the Claims Tribunal Agreed Procedure on a

trial basis as a pilot project for a period of six months. However, certain clarifications to the scheme have been made by this Court vide order dated

16th December, 2009 which have been incorporated in the Claims Tribunal Agreed Procedure.

2. Mr. Atul Nanda, the learned Standing Counsel for Union of India raised two concerns with respect to the order dated 16th December, 2009 which are as under:-

(i) In para 7 of the order dated 16th December, 2009, the learned Tribunals have been directed to compute the compensation payable in death cases according to the principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129, (2009) 6 SCC 121, 2009 ACJ 1298**. Mr. Atul Nanda submits that there are other judgments in which different view has been taken and, therefore, the learned Tribunals may be left free to follow the law laid down in other judgments as well.

(ii) The direction in para 5(xii) of the order dated 16th December, 2009 to the Claim Tribunals to ensure that

the claimants are awarded just compensation in accordance with law, be deleted.

3. With respect to the first contention, it is hereby clarified that the order dated 16th December, 2009 is an interim order based on the Claims Tribunal Agreed Procedure accepted by all the seventeen Insurance Companies and Delhi Police for expeditious settlement of accident cases for a limited period

of six months from 15th January, 2010 to 14th July, 2010. This is a pilot project on trial basis with a object that the claimants get the compensation within a period of 120 days from the date of the accident. Unless the scheme is clear and definite in all respects, the settlement of death cases within a fixed time frame may not be possible. It is noted that on average, there are about 20 accident cases in a month in Delhi and, therefore, this scheme would cover approximately 120 cases over a period of six months. The clarification given in para 7 of the order dated 16th December, 2009 is to make the scheme definite and clear and not to leave any confusion in the applicability of the scheme. It is also noted that all the nationalized Insurance Companies had in the meeting held in May, 2009 recorded in the Minutes of the Meeting dated 29th May, 2009 agreed to settle all the pending death cases in Delhi according to the principles laid down by the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). Similar

proposal had also been accepted by the Insurance Companies before the Hon'ble Supreme Court in the meeting of the Arrears Committee. Para 7 of the order dated 16th December, 2009 is in line with the accepted stand of the Insurance Companies. However, if still there is any difficulty for the Insurance Companies to settle the cases in terms of the order dated 16th December, 2009, the liberty is given to them to approach this Court in terms of para 12 of the order dated 16th December, 2009

appropriate directions.

4. With respect to the second objection that the Tribunals should not examine whether the amount offered by the Insurance Companies is in accordance with law or not, it is clarified that the purpose of the scheme is to expedite the payment of compensation to the victims of the road accidents in accordance with law without compromising the quality of justice and, therefore, the directions given to the learned Tribunals in this regard are necessary to uphold the rule of law.

5. It is also to be noted that the purpose of procedure is to help dispense justice. Considering the situation in the past and the fair approach adopted by the parties before this Court, the

common goal being quicker adjudication, we have to find a way forward to rid the inefficiencies of the past.

6. The orders dated 8th June, 2009 and 5th November, 2009 stand modified by the order dated 16th December, 2009 in so far as the Insurance Companies had been directed to deposit the admitted amount.

7. List on 8th January, 2010 for compliance of directions given in para 18 of the order dated 16th December, 2009 and on 23rd March, 2010 for consideration of the first report of the Committee.

8. The approved Claims Tribunal Agreed Procedure has been appended to this order (which will be uploaded on the internet) so as to enable access by all concerned.

9. The copy of this order along with order dated 16th December, 2009 and Claims Tribunal Agreed Procedure, as finally modified and approved be sent to all Claim Tribunals and Delhi Legal Services Authority through the Registrar (Vigilance) of this Court. All the Claims Tribunals shall send a monthly report giving particulars of total number of cases received by them in a tabular form containing the particulars of age, occupation, income, number of dependents, amount offered by the Insurance Company and the amount awarded by the Claims Tribunals in death cases and relevant particulars in injury cases. The monthly

report of the Claims Tribunals be sent to this Court through Registrar (Vigilance). The report with respect to the period between 15th January, 2010 to 14th February, 2010 be sent to this Court by 28th February, 2010. The same be placed before this Court along with the comments of Registrar (Vigilance) by 15th March, 2010, which shall be considered on 23rd March, 2010.

10. Copy of this order along with order dated 16th December, 2009 and approved Claims Tribunal Agreed Procedure be also sent to the Principal Secretary (Law), Government of NCT of Delhi for issuing appropriate instructions to all authorities under Government of NCT of Delhi for compliance of the order dated 16th December, 2009.

11. The copy of this order be given Dasti to learned amicus curiae, Committee members, Standing Counsel for Union of

India, Additional Standing Counsel for Delhi Police, Delhi Legal Services Authority and all the Insurance Companies.

12. Copy of this order along with the copy of the order dated 16th December, 2009 and the Agreed Claims Tribunal Procedure be also sent to Mr. S. Sundar, Chairman of the Expert Committee constituted by the Ministry of Road Transport and Highways.

J.R. MIDHA, J

DECEMBER 21, 2009
mk

Note : Finalized Claims Tribunal Agreed Procedure attached (11 pages).

THE CLAIMS TRIBUNAL AGREED PROCEDURE

(As approved by Delhi High Court)

CHAPTER 1- SCOPE AND DEFINITIONS

1. **Scope:** This procedure shall be applicable for all claims filed before the Claims Tribunals in the NCT of Delhi.

2. **Definitions. -** (1) In this procedure, unless the context otherwise requires,-

(a) "Act" means the Motor Vehicles Act,1988 (59 of 1988);

(b) "accident" means an accident involving use of motor vehicle at a public place;
(c) "Claims Tribunal" means a Motor Accidents Claims Tribunal constituted under section 165 of the Act;
(d) "Clause" shall refer to the Clauses of this Agreed procedure;
(e) "Form" means a form appended to The Delhi Motor Accident Claims Tribunal Rules, 2008;
(e) "insurance company" means the insurance company with which a motor vehicle involved in an accident was insured on the date of the accident;
(f) "investigating police officer" means the station house officer of a police station within whose jurisdiction an accident involving a motor vehicle occurs, and includes any police officer subordinate to him entrusted with the investigation of the case;
(g) "legal representative" shall have the same meaning assigned to it under clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).
(h) "Rule" or "2008 Rules" shall bear reference to The Delhi Motor Accident Claims Tribunal Rules, 2008.

(2) All other words and expressions used herein but not defined and defined in Motor Vehicles Act, 1988 or The Delhi Motor Accident Claims Tribunal Rules, 2008, shall have the meanings respectively assigned to them in that Act, or the Rules as the case may be.

CHAPTER 2- RECEIPT OF INFORMATION, VERIFICATION AND THE DETAILED ACCIDENT REPORT

3. Receipt of information of an accident and duties of the investigating police officer - (1) The Investigating Police Officer may receive information from one or more source including but not limited to:

(a) The driver/owner of the vehicle involved in the accident, by way of a report as contemplated under Section 134 of the Act;
(b) The Claimant;
(c) A witness to the accident or any other informant or source of information;
(d) The hospital or medical facility where the Deceased or Injured may have been taken to for medical attention.

(2) On receipt of the above information, it shall be the duty of the investigating police officer, as expeditiously as possible not later than 48 hours to –

(a) Intimate the factum of the accident to the Claims Tribunal within whose territorial jurisdiction the accident has occurred, which shall be entered in a register for such purpose ;
(b) If the insurance particulars are available by that time, the Investigating Officer shall also send the intimation to the concerned Insurance Company by e-mail.
(c) The factum of the accident shall also be uploaded by Delhi Police on its website.
(d) The intimation of the accident shall contain all relevant particulars

including the date, time and place of accident, registration number of the offending vehicle, policy particulars, names and addresses of the owner and driver of the offending vehicle and the name and mobile number of the Investigating Officer.

(e) In terms of Rule 3(1)(a) have the scene of accident photographed from such angles as to clearly depict, the lay-out and width, etc. of the road(s) or place, as the case may be, the position of vehicle(s), or person(s), involved, and such other facts as may be relevant so as to preserve the evidence in this regard, inter-alia for purposes of proceedings before the Claims Tribunal;

(f) Gather full particulars, and seek the following documents from the parties as under:

(A) From the owner/driver, in terms of Section 133/134 and 158 of the Act and Rule 3 of the Rules:

i. The circumstances of the occurrence, including the circumstances if any for not taking reasonable steps to secure medical attention to the injured person in terms of Section 134(a) of the Act;
ii. the date, time and place of the accident;
iii. particulars of the persons injured or deceased in the accident;
iv. name and address of the driver and the owner, and the driving license of the driver and that of the conductor in the case of a stage carriage, passenger or goods vehicle;
v. the Insurance Policy or in the alternative a valid cover note provided that such cover note should not be more than sixty days old;
vi. the certificate of insurance;
vii. the certificate of registration;
viii. in the case of a transport vehicle, the fitness certificate referred to in Section 56 of the Act and the permit.

(B) From the Claimant(s), victims of an accident or their legal representatives, as the case may be:

(i) In case of death;

(a) Proof of age and a photo- ID of the deceased at the time of accident;
(b) Death certificate and post mortem report;
(c) Proof of income of the deceased at the time of the accident,
a. in the form of pay slip/salary certificate in the case of a government/semi-government employee,
b. certificate of the employer and bank statements of the last six months of the deceased reflecting payment of salary in the case of a private employee,
c. I.T. returns in the case of a self-employed person;
(d) Details of the dependents, i.e. their age, occupation and marital status and proof of dependency in the form of affidavits, address and other contact details;
(e) Details and copies of medical bills and expenses;
(f) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;
(g) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

(ii) In case of an injury case

(a) Proof of age and a Photo- Insured, address and other contact details of the injured at the time of accident;
(b) Proof of income of the Injured at the time of the accident,
a. in the form of pay slip/salary certificate in the case of a government/semi-government employee,
b. certificate of the employer and bank statements of the last six months of the injured reflecting

payment of salary in the case of a private employee,

c. I.T. returns in the case of a self-employed person;

(c) Disability certificate issued by a Government Hospital or a recognized private hospital;

(d) MLC/accident register extract of the hospital and MLR

(e) Details and copies of medical bills and expenses; in case of long term treatment the Investigating Police officer shall record the details of the same and the Claimant may furnish such bills before the Claims Tribunal;

(f) Proof of absence from work [where loss of income on account of injury is being claimed] i.e. certificate from the employer and extracts from the attendance register or log record or like records;

(g) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;

(h) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

and thereupon the police investigating officer shall either to the above documents in possession against receipt, or retain the photocopies of the same, after attestation thereof by the person producing the same;

(3) The investigating police officer shall verify the genuineness of the documents mentioned in Clause 3(2) by obtaining confirmation in writing from the office or authority or person purporting to have issued the same or by such further investigation or verification as may be necessary for arriving at a conclusion of genuineness of the document or information in question, including but not limited to verifying the license of the driver and permit of the vehicle, where applicable, from the registering authority;

(4) The investigating police officer shall not release and shall impound the vehicle involved in the accident, when:

a. it is found that it is not covered by policy of insurance of third party risks, taken in the name of the registered owner, or

b. when the registered owner fails to furnish copy of such insurance policy, or where the driver fails to furnish the driving license

and shall bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred. He shall further report to the Magistrate, as to why the registered owner has not been prosecuted for offence punishable under section 196 of the Act, where such prosecution has not been preferred, despite existence of facts constituting such an offence.

(5) In all cases where no driving license has been furnished by the driver, or permit and insurance policy by the owner the investigating police officer shall take a statement in the form of an affidavit from the driver and or the owner, as the case may be as to the details of such driving license including the class and type of vehicle he is licensed to drive, permit and or Insurance Policy in case of the owner and the validity thereof as on the date of the accident. In such cases the investigating police officer shall proceed to investigate into the properties and assets of the owner of the vehicle and append the same to his report.

4 **Preparation and forwarding of the Detailed Accident Report (DAR):** (1) After completion of the above collection and verification of the documents and investigation as may be required, the investigating police officer shall complete the preparation of a detailed accident report **[**hereinafter referred to as **DAR]** in Form "A" not later than thirty days from the date of the accident. In terms of Rule 3 (1)(c) such DAR shall be

accompanied by requisite documents which shall include copy of the report under section 173 of the Code of Criminal Procedure, 1973(2 of 1974), medico legal certificate, post-mortem report (in case of death), first information report, photographs, site plan, mechanical inspection report, seizure memo, photocopies of documents mentioned in Clause 3(2) above, as also a report regarding confirmation of genuineness thereof, if received, or otherwise action taken.

(2) Immediately on completion of the above DAR, the investigating police officer shall forward a copy of the DAR, under its seal, duly receipted:

(i) To the Claims Tribunal, under a duly attested affidavit of the investigating police officer-

-where a claim has already been preferred by the Claimant to such Claims Tribunal or

- where no such claim has been preferred, then before the Claims Tribunal in whose territorial jurisdiction the accident has occurred.

(ii) To the Claimant (s) or victims of the accident or their legal representative(s), as the case may be at the address supplied by the Claimant to the investigating police officer, free of charge;

(iii) To the owner/driver at the addressed supplied by the owner /driver to the police investigating officer, at a cost of Rs. Five per page;

(iv) To the nodal officer of the concerned Insurance Company at a cost of Rs. ten per page.

(3) The Investigating Officer of the Police shall also furnish a copy of Detailed Accident Report along with complete documents to Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Courts, New Delhi. Delhi Legal Services Authority shall examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimants in accordance with law.

(4) Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

(5) The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Detailed Accident Report. However, if the Police is unable to produce the owner, driver, clamant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Detailed Accident Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

(6) The duties enumerated in Clause (3) and (4) above shall, as per Rule 3(2) of the 2008 Rules be construed as if they are included in Section 60 of the Delhi Police Act 1978 (34 of 1978) and any breach thereof shall entail consequences envisaged in that law, as provided for under Rule 3(2).

5. Duties of the registering authority.- It shall be the duty of the concerned registering authority to-

(a) submit a detailed report in Form "D" to the Claims Tribunal regarding a motor vehicle involved in an accident or licence of the driver thereof within fifteen days of the receipt of direction in Form "E";

(b) furnish within fifteen days, the requisite information in Form "D" on receiving the application in Form "F", by the person who wishes to make an application for compensation or who is involved in an accident arising out of use or his next of kin, or to the legal representative of the deceased or to the insurance company, as the case may be; Provided that information shall be given to the insurance company on payment of rupees ten only per page.

(c) assist the police in verification process set out in Procedure Clause 3 and 4 above and furnish to the investigating police officer a report in Form 'D' within 15 days of a request from the police investigating officer regarding verification or genuineness of any document regarding a motor vehicle involved in an accident or the license of the driver thereof.

CHAPTER 3 -CLAIMS INSTITUTED ON THE BASIS OF DETAILED ACCIDENT REPORT

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6. **Procedure on receipt of the detailed accident report: (1)** The Claims Tribunals shall examine whether the Detailed Accident Report is complete in all respects and shall pass appropriate order in this regard. If the Detailed Accident Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

(2) The Claims Tribunals shall treat the Detailed Accident Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Detailed Accident Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.

(3) The Claims Tribunal shall grant 30 days time to the Insurance Company to examine the Detailed Accident Report and to take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The Designated Officer of the Insurance Company shall place the written reasoned decision before the Claims Tribunal within 30 days of the date of complete Detailed Accident Report.

(4) The compensation assessed by the Designated Officer of the Insurance Company in his written reasoned decision shall constitute a legal offer to the claimants and if the claimants accept the said offer, the Claims Tribunal shall pass a consent award and shall provide 30 days time to the Insurance Company to make the payment of the award amount. However, before passing the consent award, the Claims Tribunal shall ensure that the claimants are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the shares of the claimants and the mode of disbursement.

(5) If the claimants are not in a position to immediately respond to the offer of the Insurance Company, the Claims Tribunals shall grant them time not later than 30 days to respond to the said offer.

(6) If the offer of the Insurance Company is not acceptable to the claimants or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act and shall pass an award in accordance with law within a period of 30 days thereafter.

(7) Where the Claims Tribunal finds that the D.A.R. and in particular the report under Section 173, The Criminal Procedure Code, 1974 annexed to such D.A.R. has brought a charge of rash and negligent driving, or the causing of hurt or grievous hurt the Claims Tribunal shall register the claim case under Section 166 of The Motor Vehicles Act,1988. In cases where the DAR does not bring a charge of negligence or despite the charge of negligence the Claimant(s) before the court chose to claim on a no-fault basis, the Claims Tribunal shall register a claim case under Section 163A, The Motor Vehicles Act,1988;

(8) Provided that in cases where the accident in question involves more than one vehicle and persons connected to all such vehicles stake a claim for compensation, the D.A.R. shall be treated as an application for compensation claim case shall be presumed to be a claim case preferred by each of them.

CHAPTER 4- CLAIMS INSTITUTED BY WAY OF AN APPLICATION BY THE CLAIMANT

7. **Applications for compensation**.- (1) Every application for payment of compensation shall be made in Form "G" and shall be accompanied by as many copies, as may be required, to the Claims Tribunal having jurisdiction to adjudicate upon it, in terms of Section 165 of the Act.

(2) In terms of Rule 8, there shall be appended to every such application:-

(a) an affidavit of the applicant(s) to the effect that the statement of facts contained in the application is true to the best of his/her knowledge/belief, as the case may be, details of previous claims preferred by the applicant(s) with regard to the same cause of action, or any other accident and if so, what was the result thereof;

(b) all the documents and affidavits for the proof thereof, and affidavits in support of all facts on which the applicant relies in context of his/her claim, entered in a properly prepared list of documents and affidavits:

Provided that the Claims Tribunal may not allow the applicant to rely in support of his/her claim, on any document or affidavit not filed with the application, unless it is satisfied that for good or sufficient cause, he/she was prevented from filing such document or affidavit earlier;

(c) proof of identity of the applicant (s) to the satisfaction of the Claims Tribunal, unless exempted from doing so for reasons to be recorded in writing by it;

(C) passport size photograph(s) of the applicant(s) duly attested;
(D) reports obtained in Form "C" and Form "D" from investigating police officer, and registering authority; and if no such report(s) have been obtained, the reasons thereof;
(E) medical certificate of injuries, or the effect thereof, other than those included in Form "C".

(3) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred:-

(a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;

(b) nature of injuries suffered and treatment taken;

(c) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and

(d) Relationship of the applicant(s), if any, with the persons mentioned in clause (b), and the owner and the driver of the vehicle.

(4) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks. Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

8. **Examination of applicant.-** On receipt of an application under Rule8, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing.

9. **Summary disposal of application.-** The Claims Tribunal may, after consideration of the application and statement, if any, of the applicant recorded under Rule 10, dismiss the application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith.

10. **Notice to parties involved-** If the application for claim is found admissible in terms of Clause 6(4) and Clause 9 above , the Claims Tribunal shall send to the opposite parties accompanied by a copy of the application along with all the documents and

affidavits filed by applicant under Rule 8 together, with a notice in Form "I" of the

date on which it will hear the application, and may call them upon to file on that date a written statement as per Rule 14 in answer to the application.

CHAPTER 5- DUTY OF THE INSURANCE COMPANY ON RECEIPT OF NOTICE AND PRE-TRIAL SETTLEMENT PROCESS AND COSTS

11. Duties of the insurance company: (1) Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Detailed Accident Report by the police.

(2) Without prejudice to its rights and contentions, where in the opinion of the Insurance Company, a claim is payable it shall confirm the same to the Claims Tribunal within thirty days of the receipt of complete Detailed Accident Report, by way of an offer of settlement of claim, with a supporting computation/calculation, under a duly attested affidavit of the Divisional Officer/ Officer appointed for such purpose.

(3) When on the date of hearing of such application and on receipt of such offer from the Insurance Company, the Claimant(s) agree to the offer of settlement of the Insurance Company, the Claims Tribunal shall record such settlement by way of a consent decree and payment shall be made by the Insurance Company within a maximum period of thirty days from the date of receipt of a copy of the consent decree which shall be made available to the parties by the Claims Tribunal within a maximum period of seven working days from the passing of such decree.

(4) The Insurance Company shall be at liberty to file an application under Section 170, The Motor Vehicles Act,1988 at any stage of the proceedings and shall be considered and adjudicated upon by the Claims Tribunal on its own merits.

CHAPTER 6- APPLICATIONS UNDER SECTION 140 OF THE MOTOR VEHICLES ACT,1988

12. Application for claim on principle of no fault liability:- (1) Every application in case of claim under Chapter X of the Act, shall be made in part II of Form "G". The Claims Tribunal shall, for the purpose of adjudication of the application mentioned in this rule shall follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall not reject any application made as per the provisions of Chapter X of the Act on ground of any technical flaw, but shall give notice to the applicant and get the defect rectified.

(3) Where the application is not accompanied by reports in From "A" and Form "D", the Claims Tribunal shall obtain whatever information is necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.

(4) Subject to the rights of the Insurance Company to prove breach of the Insurance Policy in terms of Section 149, The Motor Vehicles Act,1988 the Claims Tribunal shall expeditiously proceed to award the claims on the basis of reports in Form "A" and Form "D" and further documents relating to injuries or treatment, if any filed with affidavit, and report or certificate, if any, issued in compliance with directions under rule 18 The Claims Tribunal in passing an award on such application, shall also issue directions for apportionment, if required and for securing the interests of the claimants, following the provisions of rules 26 and 27.

CHAPTER 7- TRIAL AND AWARD

13. Framing of issues.- After considering the application, the written statements, the examination of the parties, if any, and the result of any local inspection, if made, the Claims Tribunal shall proceed to frame and record the issues upon which the decision of the case appears to it to depend.

14. **Determination of issues**.-(1) After framing the issues the Claims Tribunal shall proceed to decide them after allowing both parties to cross examine each other and the deponents, whose affidavits have been filed by the parties, on such affidavits filed with the application and the written statement and in doing so, it shall follow provision of Order XIX of the Code of Civil Procedure, 1908 (5 of 1908). (2) The Claims Tribunal may, if it appears to it to be necessary for just decision of the case, allow the parties to adduce such further evidence as each of them may desire to produce:

Provided that no such further opportunity shall be permitted unless it is shown that the affidavit of the witness sought to be examined at such stage could not be obtained and filed earlier, despite exercise of due diligence by, or that such evidence was not within the knowledge of the party relying on it.

15. **Summoning of witnesses.-** Subject to the provisions of rule 22, if an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witness unless it considers that their appearance is not necessary for a just decision of the case:

Provided that if, in the opinion of the Claims Tribunals, the party is financially poor, it may not insist on the payment of the expenses involved and the same shall be borne by the Government:
Provided further that in case where the party succeeds in whole or in part, the expenses so incurred by the Government shall be directed to be paid to the Government by the judgment debtor and so directed at time of passing of the final award..

16. **Method of recording evidence.-** The Claims Tribunals shall, as examination of witnesses proceeds, make brief memorandum of the substance of the evidence of each witness and such memorandum shall be written and signed by the Presiding Judge of the Claims Tribunal andshall form part of the evidence. Provided that evidence of any expert witness shall be taken down, as nearly as may be, word for word.

17. **Obtaining of supplementary information and documents.-** The Claims Tribunal shall obtain whatever supplementary information and documents, which may be found necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.

18. **Judgment and award of compensation.-** (1) The Claims Tribunal in passing orders shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the opposite party or parties and also the person or persons to whom compensation shall be paid.

(2) The procedure of adjudicating the liability and award of compensation may be set apart from the procedure of disbursement of compensation to the legal heirs in a case of death, and where the Claims Tribunal feels that the actual payment to the claimant is likely to take some time because of the identification and determination of legal heirs of the deceased, the Claims Tribunal may call for the amount of compensation awarded to be deposited with it, and, then, proceed with the identification of the legal heirs for disbursing payment of compensation to each of the legal heirs equitably.
(3) Where the Claims Tribunal finds that false or fabricated documents have been filed by or relied upon by the Claimant(s) to support its claim for compensation, the Claims Tribunal shall award costs of Rs.10,000 for every such false or fraudulent document filed and further direct the police to launch a prosecution against such Claimant(s) in accordance with the provisions of law.

CHAPTER 8- OTHER PROVISIONS

19. **Prohibition against release of motor vehicle involved in accident.-**(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy, at the time of seizure, despite

demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a

claim case arising out of such accident. Where the owner does not furnish such a copy of the Insurance Policy at the time of seizure, but agrees to furnish it or so furnishes it at a reasonable time thereafter, the release of the vehicle shall be subject to and only after due verification of the said Insurance Policy/cover note by the Insurance Company

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

20. Presumption about reports.- The contents of reports submitted to the Claims Tribunal in Form "A" and Form "D" by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.

21. Transfer of claim cases.- (1) Where two or more claims, arising out of the same cause of action, fall within the jurisdiction of the District Judge, he shall have the power to transfer an application for claim from the file of one Claims Tribunal, before whom the application is pending, to any other Claims Tribunal, if-

(a) the Claims Tribunal before whom the application is pending makes such a request on grounds, personal or otherwise; or

(b) upon consideration of the application for transfer by any party to the application, the District Judge is satisfied, for reasons to be recorded in writing, that there are sufficient grounds to do so.

(2) Where two or more claims arising out of the same cause of action, are pending before different Claims Tribunal in the same State, the High Court of such State may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons, on the application of any party to such proceedings..

(3) Where two or more claims arise before different Claims Tribunals in different States then an application will lie to either of the High Courts of the two states and such High Court may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons.

(4) While considering an application for transfer of a claim, the Claims Tribunal which has first issued notice in point of time shall be deemed to be the appropriate Claims Tribunal for the purpose of such transfer. .

22. Inspection of the vehicle.- The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produced by the owner for inspection at a particular time and place to be mentioned by it, in consultation with the owner.

23. Power of summary examination.- The Claims Tribunal during the local inspection or at any other time at a formal hearing of a case pending before, it may, examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not.

24. Power to direct medical examination.- The Claims Tribunal may, if it considers necessary, direct, in Form "J", any medical officer or any board of medical officers in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.

25. Securing the interest of claimants.- (1) Where any lump-sum amount deposited

with the Claims Tribunal is payable to a woman or a person under legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during this disability in such manner as the Claims Tribunal may direct to be

paid to any dependent of the injured or heirs of the deceased or to any other person whom the Claims Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased.

(2) Where on application made to the Claims Tribunal in this behalf or otherwise, the Claims Tribunal is satisfied that on account of neglect of the children on the part of the parents, or on account of the variation of the circumstances of any dependent, or for any other sufficient cause, an order of the Claims Tribunal as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested applied or otherwise dealt with, ought to be varied, the Claims Tribunal may make such further orders for the variation of the former order as it thinks just in the circumstances of the case.

(3) The Claims Tribunal shall, in the case of minor, order that amount of compensation awarded to such minor be invested in fixed deposits till such minor attains majority. The expenses incurred by the guardian or the next friend may be allowed to be withdrawn by such guardian or the next friend from such deposits before it is deposited.

(4)The Claims Tribunal shall, in the case of illiterate claimants, order that the amount of compensation awarded be invested in fixed deposits for a minimum period of three years, but if any amount is required for effecting purchase of any moveable or immoveable property for improving the income of the claimant, the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(5)The Claims Tribunal shall, in the case of semi-literate person resort to the procedure for the deposit of award amounts set out in sub-rule(4) unless it is satisfied, for reasons to be recorded in writing that the whole or part of the amount is required for the expansion of any existing business or for the purchase of some property as specified and mentioned, in sub-rule (4) in which case the Claims Tribunal shall ensure that the amount is invested for the purpose for which it is prayed for and paid.

(6) The Claims Tribunal may in the case of literate persons also resort to the procedure for deposit of awarded amount specified in sub-rule (4) and (5) if having regard to the age, fiscal background and state of society to which the claimant belongs and such other consideration, the Claims Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded, thinks it necessary to order.

(7)The Claims Tribunal, may in personal injury cases, if further treatment is necessary, on being satisfied which shall be recorded in writing, permit the withdrawal of such amount as is necessary for the expenses of such treatment.

(8)The Claims Tribunal shall, in the matter of investment of money, have regard to a maximum return by ways of periodical income to the claimant and make it deposited with public sector undertakings of the State or Central Government which offers higher rate of interest. (9) The Claims Tribunal shall, in investing money, direct that the interest on the deposits be paid directly to the claimants or the guardian of the minor claimants by the institutions holding the deposits under intimation to the Claims Tribunal.

26. Adjournment of hearing.- If the Claims Tribunal finds that an application cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing.

27. Enforcement of award of the Claims Tribunal.- Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908(5 of 1908), as if the award where a decree for the payment of money passed by such court in a civil suit.

28. Vesting of powers of Civil Court in the Claims Tribunal.- Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908).

29. Receipt of compensation paid upon payment.- The Claims Tribunal shall, obtain a receipt from the claimant in duplicate, one copy to be issued to the person who makes the payment and the other to be retained on the record while handing over the payment.

30. Registers.- (1) The Claims Tribunal shall maintain in addition to all registers required to be maintained by a court of Additional District Judge in Delhi, the following registers:- (i) Register of intimation of factum of accident (ii) Register for applications for interim award on principle of no fault liability; (iii) Register for deposit of payments in the Tribunal through cheques, etc.

(2) Claim petitions on the ground of death, permanent disability, injury and damage to property shall be entered in a separate register.

31. Custody and preservation of the records.- The necessary documents and records relating to the cases shall be preserved in the record room for a period of six years of the satisfaction of the award, if any granted, or for a period of twelve years after the judgment and award become final, whichever is earlier.

CHAPTER 9 – APPEAL

32. Appeal against the judgment of the Claims Tribunal.-(1) Subject to the provisions of Section 173, every appeal against the judgment of the Claims Tribunal shall be preferred in the form of a memorandum signed by the applicant or the advocate duly empowered by him in this behalf, and presented to the High Court and shall be accompanied by a copy of the judgment.

(2) The memorandum shall set forth concisely and under distinct heads, the grounds of objections to the judgment appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

(3) Save as provided in sub-rules (1) and (2) , the provisions of Order XLI XXI in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall mutatis mutandis apply to appeals preferred to High Court under section 173 of the Act.

33. Certified copies.- The rules relating to the issue of certified copy as in force in Delhi for the courts subordinate to the High court shall mutatis mutandis apply in the case of the Claims Tribunal.

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 842/2003

RAJESH TYAGI & ORS. ..... Appellants
Through: None.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through: Mr. A.S. Chandhiok, Learned ASG with Mr.Vikas Pahwa, Add.Standing Counsel for Delhi Police.
Mr. A.J. Bhambhani, Amicus Curiae
Mr.Jeet Pathak and Mr.C.S.Chauhan for Ms. Rajdipa Behrua, Amicus Curiae
Mr.Kanwal Choudhary, Adv. for NIA
Mr. Manoj Ranjan Sinha, Adv. for NIC
Mr. K.L. Nandwani and Mr. Sameer Nandwani, Adv. for Reliance General Insurance Co. Ltd.
Ms. Suman Bagga and Ms.Jaspreet Soodan, Advs. for Cholamandalam Gen. Insurance Co. Ltd.
Ms. Majusha Wadhwa, Adv. for Oriental Insurance Co. Ltd.
Ms. Anjalli Bansal, Adv. for Tata AIG General Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd. and Raheja QBE General Insurance Co. Ltd.

Ms. Shantha Devi Raman, Adv. for
IFFCO Tokyo General Insurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 15.01.2010

CM No.785/2010

1. This is an application by Delhi Police for extension of time for commencement of the implementation of the Claims Tribunal Agreed Procedure. The date of commencement of the Pilot Project for implementation of the Claims Tribunal Agreed Procedure was fixed as 15th January, 2010 vide order dated 16th December, 2009. The learned Additional Solicitor General submits that the Delhi Police has decided to give 60 days' training to the police officers for implementation of the Claims Tribunal Agreed Procedure and the list of the officers for such training is being compiled. The Delhi Police is also preparing the Manual for Investigation of Motor Accident Claim Cases and the Training to the officers shall commence from 1st February, 2010. The date of commencement is, therefore, sought to be extended.

2. In the light of the facts stated above and on the undertaking of the Police to commence the implementation of the Claims Tribunal Agreed Procedure from 2nd April, 2010, extension of 10 weeks is granted to Delhi Police. The Claims

Tribunal Agreed Procedure shall now commence from 2nd April, 2010 instead of 15th January, 2010.

3. The application is disposed of.

FAO No.842/2003

1. It has been brought to the notice of this Court that the Hon'ble Supreme Court has passed order dated 17th December, 2009 in SLP (Civil) Nos.11801-11804/2005 in which various directions have been issued including a direction relating to the injuries suffered by the victims of the road accident which are reproduced hereunder:-

> "16. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for

> treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them."
>
> "17. ... Similarly in cases of injuries, the insurers can offer treatment in hospitals approved by it and meet the expenses or pay the bills, or if the victim has already undergone the treatment, reimburse the cost of treatment. It can also reimburse other items of special damages, the damages for pain suffering, which is also standardized in several decisions of this Court. By such voluntary payment there will be all round

> benefits. The insurers save interest and litigation cost and discharges their obligation to the society. The victims will be relieved from financial hardship and the benefit from timely effective treatment Burden on courts will be reduced and judicial man power can be diverted to more complex cases."

2. It has been pointed out by the learned amicus curiae that no provision has been made in the Claims Tribunal Agreed Procedure for cashless treatment of the victims of the road accidents. Most of the victims of the road accidents belong to the poorest strata of the society who have no means to bear the expenses of treatment/surgery to be performed. It is, therefore, suggested by the leaned amicus curiae that the following clause 3(3) may be incorporated in the Claims Tribunal Agreed Procedure:-

> “3(3). In case of grievous injuries suffered by a victim of the road accident who may require some surgery or shifting to some other hospital for better treatment, the Investigating Officer of the Police shall verify the existence of the Insurance policy in the first instance and shall submit the verification report and the copy of the Insurance policy along with the Report under Clause 3(2) to the Claims Tribunal within 48 hours of the accident whereupon the Claims Tribunal shall, after hearing the Insurance company and satisfying itself about the existence of the Insurance policy, direct the Insurance company to directly pay the hospitalization charges to the concerned hospital. However, this payment

> by the Insurance company shall be subject to the final outcome of the claim and in the event of Insurance company having legal defence available to it to avoid the liability, recovery rights in respect of such amount paid by the Insurance company shall be given by the Claims Tribunal to the Insurance company to recover the same from the driver and owner of the offending vehicle. The Claims Tribunal shall send the said order to the concerned hospital. If the Tribunal finds that the victim of the road accident needs shifting to some other hospital for better treatment then the Tribunal shall also pass appropriate order in this regard.”

3. The Claims Tribunal Agreed Procedure has been formulated by the Committee appointed by this Court with the consent of all the insurance companies. The aforesaid proposal shall be

examined by the same Committee which shall consult the Insurance Companies and submit the report to this Court within a period of four weeks.

4. List for the report of the Committee on 15th February, 2010 at 2.30 PM.

5. The Insurance Companies have not placed on record the list of their Nodal Officers in terms of order dated 16th December, 2009. Let the list of Nodal Officers of all the Insurance companies be placed on record before the next date of hearing.

6. Learned Additional Standing Counsel for Delhi Police submits that the Motor Accident Claims Manual is under preparation. Let the same be also placed on record on the next date of hearing.

7. Ms. Anjalli Bansal, learned counsel for the Bharti AXA General Insurance Company Ltd. and Raheja QBE General Insurance Company Ltd. submits that she had appeared on 16th December, 2009 and had filed an affidavit on behalf of Bharti AXA General Insurance Company Ltd. but her appearance has not been

recorded in the order dated 16th December, 2009. The appearance of Ms. Anjalli Bansal, Advocate is taken on record on behalf of Bharti AXA General Insurance Co. Ltd. and Raheja QBE General Insurance Co. Ltd. on 16th December, 2009.

8. Copy of this order be given Dasti to learned counsel for the parties under the signature of the Court Master.

9. Copy of this order be also sent to the Convenor of the Committee appointed by this Court.

10. Copy of this order be also sent to Mr. Sundar, Chairman of the Expert Committee appointed by the Government of India to examine and frame the new law on motor accident

cases. The Expert Committee may also consider incorporation of the suggestions contained in this order while framing the new law.

11. Copy of this order be also sent to all the Claims Tribunals through the Registrar (Vigilance) of this Court.

J.R. MIDHA, J

JANUARY 15, 2010
s.pal

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 842/2003

RAJESH TYAGI & ORS. ..... Appellants

Through Mr. Atul Nanda, Ms. Rameeza Hakeem, Mr. Gaurav Gupta, Mr. Sumeer Sodhi, Ms. Malika Gahlot, Ms. Sugandha and Mr. Sanjay Bhardwaj, Advocates.

versus

JAIBIR SINGH & ORS. ..... Respondents

Through Mr. Pankaj Seth, Advocate for Royal Sundaram Alliance Insurance Company and Universal Sompo General Insurance Co.

Ms. Manjusha Wadhwa and Ms. Harsh Lata Advocates for OIC.

Mr. K.L. Nandwani, Advocate for United India Insurance.

Ms. Shantha Devi Raman, Advocate for Iffco Tokyo General Insurance.

Mr. Sameer Nandwani, advocate for Reliance General with Mr. Ranjan.

Mr. A.S. Chandhiok, ASG, with Mr. Vikas Pahwa, Additional Standing Counsel and Mr. Pratap Singh Parmar, Advocate for Delhi Police.

Mr. V.P. Choudhary, Sr. Advocate and Mr. A.J. Bhambhani, as amicus curiae.

Mr. Anjali Bansali, Advocate for Tata AIG General Insuarance, Bharti AXA General Insurance, Raheja QEB General Insurance Co. Ltd.

Mr. S.L. Gupta, Advocate for National

Insurance.
Mr. Sunil Kapoor Advocate for HDFC Egro General Insurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 15.02.2010

1. The Delhi Police has prepared a Manual for training of the Investigating Officers for investigation of the motor accident claims cases. Copy of the same has been furnished to the learned amicus curiae, Mr. A.J. Bhambhani as well as Mr. Arun Mohan, who are assisting the Court in this matter. Let the same be examined by the learned amicus curiae and their suggestions, if any, shall be considered on the next date of hearing. It is submitted by the learned Additional Solicitor General that the training is being imparted to all the Investigating Officers.

2. It is suggested by the learned amicus curiae that apart from the training, some cases may be investigated according to this manual and the Investigation Reports in those test cases be placed before this Court on the next date of hearing, so that the difficulty, if any, in the implementation of this manual, can be examined. Delhi Police has no objection to this suggestion and

they agree to use this Manual for implementation in some cases and the Reports in those cases shall be placed before this Court on the next date of hearing. *FAO 842/2003*

The difficulty, if any, faced by the Investigating Officers in investigating the cases in accordance with this Manual be also placed before this court on the next date of hearing.

3. The Committee appointed by this Court is deliberating upon the cashless treatment in injury cases in terms of the order dated 15th January, 2010. It is reported that the Committee has fixed the meeting on 28th February, 2010 and the report shall be placed before this Court on the next date of hearing.

4. List for examining the report of the Committee, the report of the learned amicus curiae and also the report of the police in the test cases on 17th March, 2010 at 2.30pm.

5. Vide order dated 16th December, 2009 (para 19), Union of India and Govt. of NCT, Delhi were directed to issue appropriate instructions to their respective hospitals to instruct them to issue MLC and Post Mortem Report within 15 days of the accident. Govt.

of NCT, Delhi was also directed to issue directions to the registration authorities. Copy of the order dated 16th December, 2009 was sent to the Secretary - Health, Central Govt. as well as Principal Secretary - Transport and Health, Govt. of NCT of Delhi for issuance of the appropriate instructions.

6. Let the instructions issued by the Central Government and Govt. of NCT, Delhi in terms of order dated 16th December, 2009 be placed before this Court on the next date of hearing. Copy of this order be sent to Union of India, through its Standing Counsel, Atul Nanda and Govt. of NCT of Delhi through its Standing Counsel, Mr. Nazmi Waziri. Copy of this order be sent to Principal Secretary - Law and Justice, Govt. of NCT of Delhi, along with copies of Order dated 16th December, 2009 and 21st December, 2009.

7. Vide order dated 15th January, 2010, all the Insurance Companies were directed to place on record the list of their Nodal Officers in terms of order dated 16th December, 2009. In compliance of the said Order, Bharti AXA General Insurance and Tata AIG General Insurance have appointed their Nodal Officers and their names have been placed on record by their Counsel, Ms.

Anjalli Bansal. Raheja QEB General Insurance Company has no operations in NCR and, therefore it has not appointed any Nodal Officer.

8. Let the names, addresses and telephone numbers of the Nodal Officers of the remaining companies be placed on record on the next date of hearing. It is clarified that the Nodal

Officers, in terms of the Order dated 16th December, 2009, shall be responsible for implementation of the Claims Tribunal Agreed Procedure which is due to commence on 2nd April, 2010 initially for a period of six months and each Insurance company has to depute one Nodal Officer for compliance.

9. Copy of this order be given dasti to Counsel for all the insurance companies, the learned amicus curiae and Delhi Police through Mr. Vikas Pahwa, Additional Standing Counsel for Delhi Police under signature of Court Master.

J.R. MIDHA, J

FEBRUARY 15, 2010
HL

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 842/2003

RAJESH TYAGI & ORS. ..... Appellants
Through : None.

versus

JAIBIR SINGH & ORS. ..... Respondents
Through : Mr. Manoj Ranjan Sinha, Adv. for R – 3.
Ms. Mukta Gupta, Standing counsel for Delhi Police.
Mr. V.P. Chaudhary, Sr. Adv. and Mr. Anoop Bhambhani, amicus curiae.
Mr. K.L. Nandwani, Adv. for United India Insurance Co. Ltd.
Mr. Atul Nanda, Ms. Rameeza Hakeem and Mr. Sumeer Sodhi, Advs. for Bajaj Allianz General Insurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for National Insurance Co. Ltd.
Mr. Kanwal Chaudhary, Adv. for New India Assurance Co. Ltd.
Ms. Manjusha Wadhwa, Adv. for Oriental Insurance Co. Ltd.
Mr. Sameer Nandwani, Adv. with Ranjan Sinha, Manager (Legal) for Reliance General Insurance Co. Ltd.
Ms. Suman Bagga, Advo for ICICI Lombard General Insurance Co. Ltd. and Cholamandalam General Insurance Co. Ltd.
Ms. Shantha Devi Raman, Adv. for IFFCO Tokyo General Insurance Co. Ltd.
Ms. Anjali Bansal, Adv. for

Tata AIG General Insurance
Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 25.09.2009

1. Vide orders dated 10th August, 2009 and 4th September, 2009, the Insurance companies were directed to file the report with respect to the compliance of the order dated 8th June, 2009. The compliance report has not been filed and some more time is sought by the counsel for the Insurance companies. Let the compliance report be filed within two weeks with advance copy to learned amicus curiae as well as learned Standing counsel for Delhi Police.

2. Mr. Atul Nanda, learned counsel for Bajaj Allianz General Insurance Company submits that under Section 168 of the Motor Vehicles Act, the Insurance company has no liability to pay the award amount till the award amount is determined by the Claims Tribunal under Section 168 of the Motor Vehicles Act.

3. Mr. Kanwal Chaudhary, the nominated counsel for New India Assurance Company Limited submits that New India Assurance Company Limited is prepared to comply with the directions dated 8th

June, 2009 provided the claimant enters appearance before the Claims Tribunal either in a private claim petition or in pursuance to the Accident Information Report which is treated as a claim petition.

4. The directions dated 8th June, 2009 were passed keeping in view that the Delhi Police is now regularly filing the Accident Information Report with the claims Tribunal within 30 days of the accident and along with the said report, the police is also producing all the relevant documents required by the Insurance company including the driving licence, registration certificate, Insurance policy, fitness, permit, etc. The copy of the Accident Information Report along with the aforesaid documents is also being simultaneously served on the Insurance company. The Delhi Police is also producing the owner, driver, eye-witness and claimants before the Claims Tribunal. As per the third party claim manual, the Insurance companies are duty bound to investigate the claim upon receipt of intimation and in cases where all the documents are in order and all the facts required for computation of compensation have been verified, the Insurance companies can settle the claim. It is not disputed by any Insurance company that all claims except the motor accident claims are processed and settled without the intervention of the Court. In a simple case of a damage to a car, upon

receipt of the intimation, the Insurance company immediately appoints a surveyor who inspects the vehicle, takes photographs and settles the claim with the workshop almost within 24 hours and the owner does not even have to pay to the workshop for repairs. Even in damage to a factory by fire, immediately a surveyor is appointed and the claim is settled

without the intervention of the Court. The damage to human life either by injury or by death is more serious than the damage to a car or to a factory. It is painful to note that in the case of death of a victim in road accident, the Insurance companies do not settle the claims even where they have received and verified all the relevant documents for settlement of claims such as age, income and number of legal representatives and no defence is available under Section 149 of the Motor Vehicles Act.

5. Be that as it may, the issues raised by the learned counsel for the Insurance companies require examination and the same shall be examined after the report is filed by the Insurance companies. The report be also called from the Motor Accident Claims Tribunals through the Registrar (Appellate) as to the compliance of the order dated 8th June, 2009 by the Insurance companies before the next date of hearing.

6. Notice be issued to Secretary, Ministry of Road Transport and Highways through Standing Counsel Mr. Atul Nanda to assist this Court on the above issues.

7. It has been reported in the Pioneer on 22nd September, 2009 that the Ministry of Road Transport & Highways has appointed an Expert Committee to review the provisions of the Motor Vehicles Act, 1988 and to make appropriate amendments to the Motor Vehicles Act, 1988 after examining the law in other countries.

8. The Government may also examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

9. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents

such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety.

10. The South African model system shall also save the cost of manpower used by Insurance companies to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, http://transport.gov.za/library/docs/raf/index.htm.

11. Copy of this order as well as the orders dated 21st April, 2009, 18th May, 2009, 28th May, 2009, 8th June, 2009 and 20th July, FAO 842/2003

2009 be sent to the Secretary, Ministry of Road Transport & Highways.

12. The Delhi Police has filed the compliance report for the month of June and July, 2009 which has been examined by the Registrar (Vigilance) who has submitted his report dated 1st September, 2009. Let the compliance report for the month of August, 2009 be filed by 15th October, 2009. The same shall be examined by the Registrar (Vigilance) who shall submit his report by 31st October, 2009.

13. The case be listed for 5th November, 2009 at 12:30pm.

14. Copy of this order be given 'Dasti' to learned amicus curiae and

learned Standing counsel for Delhi Police as well as the counsel for the Insurance Companies under the signature of Court Master.

J.R. MIDHA, J

SEPTEMBER 25, 2009
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 287/2008

ZAMINDAR MOTOR TRANSPORT CO. P.LTD. ..... Appellant
Through: Mr. Ranjan Kumar, Adv.

versus

NEW INDIA ASSURANCE CO. & ORS. ..... Respondents
Through: Mr. Kanwal Choudhary, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 18.11.2009

1. The accident dated 24th February, 2007 resulted in the death of Ram Bhaj. The deceased was survived by his widow, two daughters, two sons and parents, who filed the claim petition before the learned Tribunal.

2. The learned Tribunal passed an award for Rs.6,24,000/- in favour of the claimants/respondents No.3 to 8 and against respondent No.1. The learned Tribunal further held that the driving licence of the driver of the offending vehicle was fake and, therefore, respondent No.1 was given the right to recover the award amount from the appellant.

3. It is noticed that in large number of cases, the insurance companies upon investigation after the accident discover the driving licence of the driver to be fake. The issuance of fake driving licence is

a serious criminal offence. The victims of the road accidents suffer because the Insurance Companies deny the liability on the ground of fake licence. However, no action is taken by any authority against the persons who issue fake licence. The persons holding fake driving licence are danger to the society. They do not appear in test for the issuance of licence and may not have undergone proper training of driving. The persons holding fake driving licence may not even know driving or may be offenders whose licence have been cancelled for having caused an accident.

4. It is pointed out by learned counsel for the respondent No.1 that the Road Transport Authority and Police do not take any action against the persons who issue fake driving licences. It is submitted that there is no system by which the Police can easily detect whether a particular driving licence is fake or genuine. When a driver is employed, the employer has no means to verify that the driving licence produced by the driver is genuine. A licence is found to be fake only after the accident by the Investigator appointed by the insurance company. The learned counsel for respondent No.1 submits that not even a single case has come to his notice where persons issuing or holding fake driving licence have been prosecuted.

5. There is need to frame strict law to provide severe punishment

for the persons who indulge in issuance of fake driving licence as well as the persons who hold the fake licence. The strict law for issuance of licence and for enforcing the same can reduce the number of accidents to a large extent.

6. Notice be, therefore, issued to the Road Transport Authority, Delhi and Commissioner of Delhi Police to ascertain as to what action is taken to curb the issuance of fake driving licences and against the persons who indulge in issuing fake driving licences.

7. Since the Ministry of Road Transport and Highways has constituted an Expert Committee to look into the amendments in the Motor Vehicles Act, copy of this order be sent to the Secretary, Ministry of Road Transport and Highways as well as Shri S. Sunder, Chairman of the Expert Committee for considering the framing of strict law relating to the issuance of licence as well as for providing of severe punishment to the persons issuing or using fake driving licences. The Committee may also consider the introduction of integrated online data of licences all over the country so that the fake driving licence can be easily detected by the Police and other authorities as well as by any employer at the time of employing the driver.

8. It is also noted that there are a large number of hit and run cases where the driver ran away after killing or injuring the victim of

road accident. In the year 2007, there were 38% hit and run cases in Delhi. In many cases, the driver of the offending vehicle is not traced out and even in cases, where the driver is traced, by that time the vehicle has been repaired and there is no evidence of accident/damage to the vehicle. There are cases where the driver was drunk at the time of the accident, but by the time he is traced, the evidence of being drunk is destroyed.

9. The Expert Committee may also consider framing of law prohibiting the driver of the offending vehicle to leave the spot of accident and to remove the vehicle from the spot of the accident without the permission of the Police; and the offence of fleeing or removing the vehicle from the spot of accident may be made a stringent offence with severe punishment. In some of the countries, it is an offence to remove the vehicle from the spot of the accident or to repair the vehicle involved in the accident without the permission of the Police and no mechanic repairs the vehicle involved in the accident without the written clearance from the Police. The Expert Committee may consider this aspect of the matter.

10. The Expert Committee may also consider constitution of a centralized Commission relating to motor accident claim cases to monitor the accidents all over the country, identify causes of the accidents, take action for preventing accidents and to ensure the

disbursal of compensation to the victims of the road accident within a fixed time frame.

11. The accident cases need different type of investigation and handling by the Police. In road accidents, the eye-witnesses do not normally come forward to provide any assistance to the victims or to the Police. The victims of the road accidents suffer because of this. The Commissioner of Police may consider setting up a separate Wing for handling of the cases of the road accidents to ensure least inconvenience to the victims and the witnesses and to encourage the public to come forward and help the victims of the road accidents.

12. The response time of the Police and the Ambulance to reach the accident site is quite high and not commensurate with the international standards. There is need to evolve a system where the Police and the Ambulance immediately reach the accident site as the victims of the road accidents need immediate medical attention. Delhi Police and Secretary (Health), Government of NCT of Delhi is also directed to furnish the data as to how many Ambulances are available in Delhi to cater to victims of road accidents and what is the response time to reach the spot of the accident.

13. Over one lakh people are killed and nearly half a million are injured every year in road accidents in India. There is one accident per minute and one fatal accident every five minutes. According to

survey of Central Road Research Institute, more than 90% pedestrians feel unsafe while crossing roads and they comprise more than 50% of the road victims. WHO Report predicts that by the year 2020, a major killer in India will be road accidents and will account for almost 5,46,000 deaths alone. The accident rate in India is 35 per thousand vehicles, which is the highest in the world.

14. The Hon'ble Supreme Court in the case of **Rathnashalvan vs. State of Karnataka, (2007) 3 SCC 474** has examined the growing problem of road accidents and the economic impact of the road accidents. It has been held by the Hon'ble Supreme Court as under:-

> "8. Vehicular accidents resulting in deaths and injuries is spiraling. The Editorial under the heading "Road Traffic Injuries & fatalities in India - a modern epidemic" in Indian J. Med. Res. 123, January 2006 contains some interesting observations. The relevant portions read as follows:
>
> > The United Nations General Assembly adopted a resolution on road safety on October 26, 2005 which invites Member States to implement the recommendations of the World Report on Road Traffic Injury Prevention; to participate in the first United Nations Global Road Safety Week; and to recognize the third Sunday in November of every year as the World Day of Remembrance for Road Traffic Victims'. This resolution follows the publication of The World Report on Road Traffic Injury Prevention by the World Health Organization in 2004. This report highlights the fact that all over the world working age people are more likely to suffer hospitalization, permanent disability and death due to road traffic injuries

than most other diseases. The situation in India is not very different.

About 82,000 persons were killed on Indian roads in 2002. Official statistics regarding serious injuries are not reliable as they underestimate the actual number, but it is estimated that the number of people hospitalized may be 15-20 times the number killed. In a do-nothing scenario, it is possible that India will have 1,20,000 - 1,30,000 road traffic fatalities in the year 2008 and possibly 1,50,000 - 1,75,000 in 2015. Our vision should aim at reducing the fatalities to less than 1,00,000 in the short term (2008) and less than 70,000 in the long term (2015).

XXX XXX XXX

Safety measures for the near future

XXX XXX XXX

Motor vehicle occupants: (i) Enforcement of seatbelt use laws countrywide; (ii) restricting travel in front seat of cars by children has the potential of reducing injuries dramatically; and (iii) bus and truck occupant injuries, fatalities, and injuries caused to other road users can be reduced significantly by enforcing strict observance of speed limit regulations on highways. Ensuring that bus timetables and truck movement schedules make it possible for drivers to observe speed limits with ease. Random speed checking on highways would help ensure such measures.

XXX XXX XXX

Road safety strategies - Long term

Traffic calming and speed control: (i) Aim at implementing speed control and traffic calming measures in all urban areas and at appropriate locations on rural highways by altering road design, vehicle monitoring through intelligent transport systems, and vehicle design by the year 2015. This measure is likely to give us the maximum savings in terms of lives and serious injuries; and (ii) segregated lanes for vulnerable road users and

buses in urban areas. Non-motorized transport and buses must be provided segregated lanes on all major arterial roads in urban areas. India specific designs need to be developed and phase wise implementation plans drawn up for all cities.

XXX XXX XXX

Vehicle safely: (i) All vehicles sold in India should meet international crashworthiness standards by 2010; (ii) all buses and trucks should meet pedestrian impact standards by 2010; (iii) all urban buses to have low floors and automatic closing doors; (iv) crashworthiness standards must be developed for all indigenous vehicles by 2010 and implemented by 2012; (v) installation of Intelligent Transport Systems (ITS) and other modern safety devices for assisting and controlling drivers; and (vi) driving under the influence of alcohol and other drugs. A long term strategy to reduce drinking and driving incidence to less than 10 per cent of all crashes needs to be drawn up for the next 10 yr. Sensitization of the public to the extent of the problem. Institution of random roadblocks and checking on urban roads and rural highways. Ignition interlock on cars.

9. In "Global Road Safety" certain revealing data have also been provided. They read as follows:

> THE COMING PLAGUE OF ROAD TRAFFIC INJURIES: A PREVENTABLE BURDEN FOR RICH AND POOR COUNTRIES.

Almost 1.2 million people are killed each year and 20-50 million are injured or disabled, most people are unaware that road traffic injuries are a leading cause of death and disability.

10. In developing countries, death rates from vehicle crashes are rising, and disproportionately high in relation to the number of crashes. According to a report published in 2000

• Developing and transitional countries cumulatively represent over 85 percent of all road traffic deaths

• Kenya has nearly 2,000 fatalities per 10,000 crashes. Vietnam has over 3,000 fatalities per 10,000 crashes.

• 44% of all road traffic deaths occur in the Asia/Pacific area, which only has 16 % of the total number of motor vehicles.

• At 71,495 and 59,927 total deaths, China and India, respectively, had the highest number of road fatalities in the world in 1995.-

• Pedestrian deaths represent 62 % of all traffic fatalities in Lebanon. In most developing countries vulnerable road users, including pedestrians, bicycle and motor cycle riders, account for the majority of all fatalities.

• Eastern European countries represent 6% of motor vehicles, but 11% of crash fatalities worldwide.

• The Latin America/Caribbean region has the second highest crash costs behind Asia.

11. As developing countries increase vehicle use, road traffic injuries are expected to become the third leading cause of death and disability worldwide by 2020. In developing countries, each vehicle is much more lethal than the vehicles in developed countries, because it most frequently takes the lives not of vehicle occupants, but of vulnerable road users: pedestrians, cyclists. Many developing countries are increasing the rate of motorized vehicle use at up to 18% per year. In India, for example, there has been a 23% increase in the number of vehicles from 1990-1999 and a 60-fold increase is predicted by 2050.

The human toll is tragic. Survivors and family members are affected not only by an immediate death or disability, but sometimes a lifetime of psychological and physical suffering. Crashes often result in orphans, and some victims, as young as infants, spend the rest of their lives in medical facilities.

ECONOMIC IMPACT

12. In addition to the devastating human toll, the economic impact of road crashes is also enormous. Many of those injured or killed are wage earners; leaving families destitute and without means of support. Loss of wages, property damage, and other factors affected by road traffic crashes represented 4.6% of the gross national product of the United States in 1994. In developing countries, road traffic crashes represent 3-5% of the GNP. The estimated annual cost of road traffic crashes in developing countries exceeds $100 billion (US). This amounts to nearly double the total combined development assistance these countries receive every year from bilateral and multi-lateral government organizations. Globally, the estimated annual costs of road crashes are 500 billion (US).

THIS PROBLEM IS PREVENTABLE

13. We have the tools needed to combat this epidemic. In the developed nations, proven methods such as enforcement of laws regarding driving under the influence of alcohol or drugs, reducing speed limits, and requiring seat belts and restraints have shown significant reduction in traffic fatalities. Road design and road environment, vehicle design, and road safety standards are also strategies that successfully address traffic safety. For maximum impact of RTI's, a systems approach with multiple, scientifically proven prevention techniques must be employed. Education alone has been shown to be less effective, and often ineffective.

14. Proven interventions for developed countries require research, modification, and testing for developing countries. For example, developing countries face poorly designed and maintained roadways, unsafe vehicles, drivers under the influence of drugs or alcohol, lack of national policies, and inadequate enforcement. Success will require significant new resources supported by sustained political commitment."

15. The suggestions of this Court for consideration by the Expert Committee constituted by the Ministry of Road Transport and Highways are as under:-

(i) Strict rule regarding issuance of driving licence.

(ii) Online data of the driving licences issued all over the country with record of suspension/cancellation of licence and disqualification of licence holders.

(iii) Online data of registration and insurance particulars of all the vehicles so that immediately after the accident, the police can find out the Insurance Policy number and send the intimation to the Insurance Company.

(iv) Severe punishment for fake driving licence, both for the holders and forgers.

(v) Severe punishment for the accused who runs away from the spot after causing the accident.

(vi) Severe punishment for removing the vehicle from the spot of the accident.

(vii) Punishment for mechanic who repairs the vehicle involved in the accident without clearance by the police.

(viii) Severe punishment for drunken driving.

(ix) Improvement of roads.

(x) Removal of unsafe vehicles and obstructions from the road.

(xi) Special cell of the police to enforce the law as well as for investigation into the accident cases.

(xii) Formation of a centralized Commission relating to motor accident claim cases to monitor the number of accidents to examine the factors responsible for the accidents to take steps for preventing the accidents and to ensure time bound disbursement of compensation to the victims of the road accident.

16. List for hearing 10th December, 2009.

17. Copy of this order be sent to the Ministry of Road Transport and Highways and Shri S. Sunder, Chairman of the Expert Committee through Mr. Atul Nanda, Standing Counsel, under the signature of the Court Master.

18. Copy of this order be also sent to the Commissioner of Delhi Police through Mr. Vikas Pahwa, Additional Standing Counsel, under the signature of the Court Master.

19. Copy of this order be also sent to the Road Transport Authority and Secretary (Health), Government of NCT of Delhi through Mr. Vivek Tandon, Counsel for Government of NCT of Delhi, under the signature of the Court Master.

20. Copy of this order be also given dasti to learned counsel for the parties, under the signature of the Court Master.

J.R. MIDHA, J

NOVEMBER 18, 2009
s.pal

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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP. 236/2009 & MAC.APP. 238/2009

Date of Decision: 23rd December, 2009

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MAC.APP. 236/2009

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through : Mr. D.D. Singh, Adv.

versus

RAKESH AHUJA & ORS. ..... Respondents
Through : Mr. Navneet Goyal and
Mr. Varun Kumar, Advs.
for R-3.
Mr. Arun Mohan, Sr. Adv. as
amicus curiae.
Mr. Vikas Pahwa, Additional
Standing Counsel for Delhi
Police.

MAC.APP. 238/2009

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through : Mr. D.D. Singh, Adv.

versus

RAKESH AHUJA & ORS ..... Respondents
Through : Respondent No.1 in person.
Mr. Navneet Goyal and
Mr. Varun Kumar, Advs.
for R-3 to 6.
Mr. Arun Mohan, Sr. Adv. as
amicus curiae.
Mr. Vikas Pahwa, Additional
Standing Counsel for Delhi
Police.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. Vide order dated 3rd December, 2009, this Court constituted a Committee comprising of Mr. Arun Mohan, Senior Advocate, Ms. Rajdipa Behura, Advocate, Joint Commissioner of Police (Northern-Range), Mr. Vikas Pahwa, Additional Standing Counsel for Delhi Police and Mr. Atul Nanda, Standing Counsel for Union of India to draw up a mechanism for prosecution of the fake driving licence holders/forgers and to make Delhi roads safe by ensuring that the fake driving licence holders do not drive on Delhi roads any more.

2. The aforesaid Committee held a meeting at Delhi Police Headquarters on 14th December, 2009. The meeting was attended by the DCPs of all the Districts and the representatives of all the seventeen Insurance Companies. The minutes of the meeting have been submitted by Mr.Vikas Pahwa, Additional Standing Counsel for Delhi Police.

3. The report of the Committee contained in the said minutes of the meeting has been examined and based on that, the

following directions are hereby passed:-

(i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence cases.

(ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1st January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3rd December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID acp-scrb-dl@nic.in. along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the

authorized officer of the Insurance Company.

(iii) The Delhi Police shall take the following action in respect of the aforesaid complaints:-

(a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station.

(b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect.

(c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station.

(iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police.

(v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance Companies or other sources.

(vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of that FIR be entered in the entry against the information received.

(vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper.

(viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State.

4. The learned counsel for all the Insurance Companies submit that the aforesaid directions shall be put to immediate compliance in so far as the fresh cases of fake driving licences are concerned. However, with respect to compilation of the data in respect of the accidents which have occurred in Delhi during the last three years, i.e. from 1st January, 2007 onwards, four weeks may be granted to the Insurance Companies to compile the said data. The submission of learned counsel for the Insurance Companies is accepted and all the Insurance Companies are directed to compile the data of the fake driving licences for the last three years and to make complaints in terms of this order to

the DCP/Crime, Delhi Police within four weeks.

5. The learned amicus curiae submits that the Delhi Police should also launch a drive to book the persons who fake driving licences and whenever a complaint is received, the Delhi Police should interrogate the driver holding fake driving licence to ascertain the source from which he obtained the fake driving licence.

6. The learned Additional Standing Counsel for Delhi Police assures this Court that Delhi Police shall implement this order in true letter and spirit and that immediate instructions shall be issued to the concerned officers of Delhi Police to book the persons involved in forging driving licences. It is further submitted that in the last two weeks, two racketeers have already been booked by the Delhi Police after the order of this Court.

7. Let the action taken report be filed by Delhi Police on the next date of hearing.

8. This Court appreciates the efforts made by Mr. Arun Mohan, Senior Advocate who had given very valuable suggestions which have been accepted by the Delhi Police. This Court also appreciates the efforts of Mr. Vikas Pahwa, learned Additional Standing Counsel for Delhi Police.

9. List for hearing on 22nd February, 2010.

10. The copy of this order be sent to all the Motor Accident Claims Tribunals through the Registrar (Vigilance). The Claims Tribunals shall call for the complaint made by the Insurance Companies to the police wherever the defence of fake driving licence is raised by the Insurance Companies.

11. Copy of this order be given dasti to learned amicus curiae, Additional Standing Counsel for Delhi Police as well as to all the Insurance Companies.

12. Copy of the order dated 18th November, 2009 as well as copy of this order be also sent to Principal Secretary (Law), Government of NCT of Delhi.

13. Copy of this order be also sent to Mr. S. Sundar, Chairman of the Expert Committee appointed by the Ministry of Road Transport and Highways.

J.R. MIDHA, J.

DECEMBER 23, 2009
mk

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 130/2009

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. R. N. Sharma, Adv.

versus

SMT. MAN SINGH & ORS. ..... Respondents
Through: Mr. L.K.Tyagi, Adv. for R-2
Mr. P.C. Aggarwal, Adv. for R-7 & 8.
Mr. A.J. Bhambhani, Amicus Curiae

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 21.04.2009

1. Learned counsel for the appellant submits that he shall be filing the affidavit during the course of the day with advance copy to the Amicus Curiae who may file the response to the affidavit within ten days.

2. Without prejudice to the issues raised by the appellant, it would be proper to issue notice to the Life Insurance Corporation of India, Reserve Bank of India, State Bank of India and Punjab National Bank to formulate a special scheme for the victims of the road accident with a higher interest rate; issuance of pass book of

deposit to the claimants; automatic renewal of fixed deposit; monthly interest to the

victims; withdrawal of amount after due verification as in pension accounts and sending the half-yearly statements to the Tribunal.

3. Let the Court notices be issued to the RBI through its nominated counsel Mr. H.S. Parihar; LIC through its nominated counsel Mr. Kamal Mehta; SBI through its nominated counsel R.P. Kapoor and Company; and PNB through its nominated counsel Mr. Jagdeep Kishore.

4. Renotify on 8th May, 2009 at 12.30PM.

5. Copy of this order be given 'Dasti' to learned counsel for both the parties and the amicus curiae under signatures of Court Master.

J.R. MIDHA, J

APRIL 21, 2009
K

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 157/2009

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through : Mr. Kanwal Choudhary, Adv.

versus

GEETA DEVI & ORS. ..... Respondents
Through : Mr. Sameer Nandwani, Adv.
for R-1 to 6.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 29.05.2009

1. The total amount awarded to the claimants is Rs. 9,40,000/- along with interest @ 6% per annum from the date of filing of the petition before the learned Tribunal. The claim petition was instituted on 3rd June, 2006 and the interest on the award amount of Rs.9,40,000/- from the date of filing of the petition i.e. 3rd June, 2006 calculated upto 2nd July, 2009 would be to the tune of Rs.1,73,900/-. The total award amount along with interest would depend upon the date of deposit of the award amount. However, taking the date of deposit as 2nd July, 2009, the total award amount along with interest would be Rs.11,13,900/-. The share of the respondents in the said amount shall be as under:-

Claimants/respondents No.2 to 6 - Rs.1,00,000/- each.

Claimant/respondent No.1 - Remaining amount

2. The appellant is directed to deposit a cheque for Rs.9,50,000/- directly with the UCO Bank, A/c Geeta Devi, Delhi High Court Branch, New Delhi. The remaining amount be paid to claimant/respondent No.1 by means of a cheque on the next date of hearing i.e. 8th July, 2009.

3. UCO Bank has agreed to open a Special Fixed Deposit Account for the victims of road accidents.

4. The aforesaid amount of Rs.9,50,000/- shall be kept by the UCO Bank in the fixed deposit in the following manner:-

(i) Rs.4,50,000/- in the name of the claimant/respondent No.1, Geeta Devi (widow) aged about 31 years initially for a period of ten years, to be renewed for a further period of ten years.

(ii) Rs.1,00,000/- in the joint names of Geeta Devi and Master Roshan (son) aged about 16 years for a period of 4 years.

(iii) Rs.1,00,000/- in the joint names of Geeta Devi and Baby Nisha (daughter) aged about 13 years for a period of 7 years.

(iv) Rs.1,00,000/- in the joint names of Geeta Devi and Master Gaurav (son) aged about 9 years for a period of 11 years.

(v) Rs.1,00,000/- in the joint names of Geeta Devi and Baby Pooja (daughter) aged about 7 years for a period of 10 years, to be renewed for a further period of three years.

(vi) Rs.1,00,000/- in the joint names of Geeta Devi and Master Sumeet (son) aged about 5 years for a period of 10 years, to be renewed for a further period of five years.

5. The UCO Bank shall open a Savings Account in the name of claimant/respondent No.1 and the entire interest on all the aforesaid fixed deposits be credited in the said account.

6. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account.

7. Withdrawal from the aforesaid account shall be permitted to the claimant/respondent No.1 after due verification and the Bank shall issue photo Identity Card to claimant/respondent No.1 to facilitate identity.

8. No cheque book be issued to the claimants/respondent No.1 without the permission of this Court.

9. Half yearly statement of account be filed by the Bank in this Court.

10. The original FDRs shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to claimant/respondent no.1 along with the photocopy of the FDRs.

11. The original Fixed Deposit Receipts shall be handed over to the claimants at the end of the fixed deposit period.

12. No loan, advance or withdrawal shall be allowed on the said FDRs without the permission of this Court.

13. On the request of the claimants, the Bank shall transfer the Savings Account to any other branch of UCO Bank in Delhi according to the convenience of the claimants.

14. List for reporting the compliance on 8th July, 2009.

15. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

J.R. MIDHA, J

MAY 29, 2009
Mk/spal

12

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP.No.682/2005

% Date of decision: 13th January, 2010

UOI ..... Appellant

Through : None.

versus

NANISIRI ..... Respondent

Through : Mr. Kanwal Choudhary, amicus curiae.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	**YES**
2.	To be referred to the Reporter or not?	**YES**
3.	Whether the judgment should be reported in the Digest?	**YES**

JUDGMENT (Oral)

1. Vide order dated 6th October, 2004, the learned Tribunal awarded a sum of Rs.5,04,600/- to claimants/respondents No.1 to 5 against which the appellant has filed this appeal.

2. On 28th November, 2005, the appellant submitted before this Court that the entire award amount along with interest amounting to Rs.9,99,312/- has been deposited with the learned Tribunal whereupon this Court directed 50% of the award amount be released

to claimants/respondents No.1 to 5 in the proportion mentioned in the award. It was further directed that proportionate amount be kept in fixed deposit in terms of the award out of the amount directed to be released.

3. In pursuance to the above order, 50% amount was released to the claimants and the balance 50% amount is with the learned Tribunal and, therefore, vide order dated 18th December, 2009, the Tribunal was directed to give the particulars of the amount lying with it.

4. The learned Tribunal has sent a report stating that the present Nazir has no cheques qua the present case. It is further submitted that the present Nazir has not received any record from the previous Nazir and the learned Tribunal has issued a notice to the previous Nazir.

5. The report reveals that the record of the Nazir has not been properly maintained and the previous Nazir has not handed over the record to the present Nazir.

6. This is a serious matter and, therefore, the learned Principal District and Sessions Judge is directed to examine the manner in which the record is being maintained by the Nazir and appropriate action be taken for loss of record of this case. The record of the Nazir be traced out and the report be submitted to this Court within three weeks.

7. It has been brought to the notice of this Court that after the deposit of cheques by the Insurance Companies with the Claims Tribunal, no intimation is given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It is stated that in many cases, the cheques have also been lost like in the present case. This problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals are, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the same in terms of the award and the case be kept pending till the compliance is placed on record. The directions given by this Court for deposit and disbursement of the award amount have been reaffirmed by the Hon'ble Supreme Court in the order dated 17th December, 2009 in SLP(C) No.11801-11804/2005 which is reproduced hereunder:-

> "18. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in consultation with the Life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for

formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank monthly to the claimants without any need for claimants having to approach either the Court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court :

(i) The fixed deposit shall be automatically renewed till the period prescribed by the Court.

(ii) The interest on the fixed deposit shall be paid monthly.

(iii) The monthly interest shall be credited automatically in the saving account of the claimant.

(iv) Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original pass book shall be given to the claimant along with the photocopy of the FDR.

(v) The original fixed deposit receipt shall be handed over to the claimant at the end of the fixed deposit period.

(vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.

(vii) No cheque book shall be issued to the claimant without permission of the Court.

(viii) No loan, advance or withdrawal shall be

allowed on the fixed deposit without permission of the Court.

(ix) The claimant can operated the saving bank account from the nearest branch of UCO Bank on the request of the claimant, the bank shall provide the said facility."

8. The State Bank of India and UCO Bank have formulated special schemes for the victims of the road accident on the above terms and, therefore, the order for the deposit should be made presently to State Bank of India through its nodal officer Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) or to UCO Bank through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) as per the convenience of the victim/legal representatives of the victim. However, if any other bank agrees to provide the special scheme for victims of the road accident on the above terms, the deposit be permitted to be made in that Bank subject to the convenience of the victim/legal representative of the victim of the road accident.

9. All the Claims Tribunals are directed to comply with the aforesaid directions.

10. List on 17th February, 2010.

11. Copy of this order along with the copy of the order dated 17th December, 2009 passed by the Hon'ble Supreme Court be sent to the Principal District and Sessions Judge and all the Claims Tribunals

through the Registrar (Appellate) of this Court.

12. Copy of this order be given 'Dasti' to learned amicus curiae and nominated counsels for all the Insurance companies.

J.R. MIDHA, J

JANUARY 13, 2010
mk/aj

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 135/2008

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through : None.

versus

GANGA DEVI & ORS ..... Respondents
Through : Mr. Navneet Goyal, Adv.
for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 20.01.2010

1. The claimant Radhe Lal Meena is present in Court and he has been examined with respect to his financial status and financial needs.

2. The learned counsel for the claimants submit that the claimants have only received interim award amount of Rs.50,000/- and the remaining amount awarded by the learned Tribunal is payable by the Insurance Company. The learned counsel further submits that the enhanced award amount has also not been deposited by the Insurance Company.

3. In view of the above, the judgment dated 23rd November, 2009 is modified to the extent that the amount awarded by the learned Tribunal as well as the amount enhanced by this Court after adjusting the interim award of Rs.50,000/- be deposited by the Insurance Company with UCO Bank, Delhi High Court Branch A/c Ganga Devi through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400).

4. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the same to the claimants by transferring the same to their Saving Bank Account.

5. The remaining amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% of the amount deposited for a period of one year.

(ii) Fixed deposit in respect of 10% of the amount deposited for a period of two years.

(iii) Fixed deposit in respect of 10% of the amount deposited for a period of three years.

(iv) Fixed deposit in respect of 10% of the amount deposited for a period of four years.

(v) Fixed deposit in respect of 10% of the amount deposited for a period of five years.

(vi) Fixed deposit in respect of 10% of the amount deposited for a period of six years.

(vii) Fixed deposit in respect of 10% of the amount deposited for a period of seven years.

(viii) Fixed deposit in respect of 10% of the amount deposited for a period of eight years.

(ix) Fixed deposit in respect of 10% of the amount deposited for a period of nine years.

6. The interest on all the aforesaid fixed deposits be paid monthly to the claimants by automatic credit of interest to their joint Saving Bank Account with UCO Bank.

7. Withdrawal from the aforesaid account shall be permitted to

claimants/respondents No.1 and 2 after due verification and the Bank shall issue photo Identity Card to claimants/respondents No.1 and 2 to facilitate identity.

8. No cheque book be issued to claimants/respondents No.1 and 2 without the permission of this Court.

9. The original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book

shall be given to claimants/respondents No.1 and 2 along with the photocopy of the FDRs.

10. The original fixed deposit receipts shall be handed over to claimants/respondents No.1 and 2 at the end of the fixed deposit period.

11. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court. 12. Half yearly statement of account be filed by the Bank in this Court.

13. On the request of claimants/respondents No.1 and 2, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to their convenience.

14. Claimants/respondents No.1 and 2 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

15. It has been pointed out by the learned counsel for the claimants that the Claims Tribunal are passing directions for releasing part of the award amount and the remaining amount is kept in fixed deposit for a long period due to which the claimants are unable to meet their exigencies and have to

approach the Tribunal again and again for release of the award amount. It is suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education etc..

16. The Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example,

if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years.

17. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children.

18. Copy of the judgment dated 23rd November, 2009 as well as copy of this order be sent to the Claims Tribunals through the Registrar (Vigilance) of this Court.

19. Copy of the order be given dasti to counsel for both the parties under signature of the Court Master.

20. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New

Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

JANUARY 20, 2010
mk

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 560/2007

RESHAM & ORS ..... Appellants
Through Mr. N.K. Jha, Adv.

versus

HARISH KAUSHIK & ORS ..... Respondents
Through Mr. Udit Kumar for Mr. A.K. De, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 22.02.2010

1. The learned counsel or respondent No.3 submits that a sum of Rs.5,38,801/- has been deposited with UCO Bank in terms of the judgment dated 11th December, 2009.

2. UCO Bank is directed to release a sum of Rs.38,801/- to appellant No.1 by transferring the said amount to her Savings Bank Account.

3. Remaining amount of Rs.5,00,000/- be kept in fixed deposits in the following manner:-

(i.) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of six months.

(ii.) Fixed deposit for Rs.50,000/- in the name of appellant No.2 for a period of one year.

(iii.) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of one and a half years.

(iv.) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of two year.

(v.) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of two and a half years.

(vi.) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of three years.

(vii.) Fixed deposit for Rs.50,000/- in the name of appellant No.3 for a period of three and a half years.

(viii.) Fixed deposit for Rs.50,000/- in the name of appellant No.4 for a period of four years.

(ix.) Fixed deposit for Rs.50,000/- in the name of appellant No.5 for a period of five years.

(x.) Fixed deposit for Rs.50,000/- in the name of appellant No.6 for a period of six years.

4. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.

5. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

6. No cheque book be issued to appellant No.1 without the permission of this Court.

7. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

8. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

9. Half yearly statement of account be filed by the Bank in this Court.

10. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of appellant No.1.

11. The appellant Nos.1 to 3 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

12. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

13. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

FEBRUARY 22, 2010
HL

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 492/1999

SARIKA ..... Appellant
Through : None.

versus

NARAIN SINGH ..... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 22.06.2009

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.2,10,000/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. On 15th December, 1989 at about 10:35 am, the appellant was returning from her school on bicycle after the examination when she was hit by truck bearing No.DEL 3622 on Bal Udyan Marg, Janak Puri. The appellant was about 13 years old at that

time and was studying in Class-VII.

3. The appellant's right leg was crushed under the truck. The appellant was initially taken to Chajju Ram Nursing Home which referred her to AIIMS where she underwent six surgeries and her right leg above knee was amputated. The appellant remained hospitalized for about six months and her permanent disability has been assessed to be 100% in relation to her right lower limb as per the disability certificate, Ex.PW1/A.

4. The learned Tribunal has awarded Rs.20,000/- towards medical expenses, Rs.10,000/- towards conveyance charges, Rs.10,000/- towards special diet, Rs.20,000/- towards pain and agony, Rs.1 lakh on account of marital status and Rs.50,000/- on account of permanent disability. The total compensation awarded is Rs.2,10,000/-.

5. The learned counsel for the appellant has urged following grounds for enhancement at the hearing of this appeal:-

(i) Compensation be awarded for implantation of the artificial limb.

(ii) Compensation be awarded for loss of income due to permanent disability.

(iii) Compensation for pain and sufferings be enhanced.

(iv) Compensation for loss of amenities be awarded.

(v) Compensation for permanent disability be enhanced.

(vi) Compensation for marital status be enhanced.

(vii) Compensation for medical treatment, conveyance and special diet be also enhanced.

6. During the pendency of this appeal, the appellant continued her education and completed Masters Degree in Computers. The appellant has produced the copy of the mark sheet of Masters in Computers Application awarded by Indira Gandhi National Open University. The appellant also desired to have the artificial limb implanted and was referred to M/s Endolite for examination of her condition for implantation of artificial leg. M/s Endolite submitted a quotation dated 6th May, 2009 before this Court giving the cost of artificial limb to be Rs.3,03,500/-.

7. Vide order dated 19th May, 2009, the appellant was permitted to lead additional evidence to prove her educational qualifications as well as the cost of the artificial limb to be implanted by M/s Endolite.

8. The witness from M/s Endolite appeared as PW-1 on 27th May, 2009 and deposed that the appellant has been examined by them and the quotation for the implantation of artificial limb was proved as Ex.P-1 according to which the cost of implantation of the artificial limb is Rs.3,03,500/-.

9. The appellant also appeared as PW-2 and deposed that she has completed Masters in Computer Application in the year 2002. The mark sheet dated 4th March, 2003 is Ex.P-2. The appellant further deposed that she was unemployed and could not get any job because of the disability. The appellant also deposed that she was still unmarried and her matrimonial prospects have been diminished due to the accident in question. The appellant also deposed that she was unable to move by public transport because of the handicap and had to spend considerable amount on conveyance. The appellant could not have the artificial limb implanted earlier because the learned Tribunal did not award any amount towards the implantation of artificial limb.

10. The learned Tribunal has not awarded any compensation for implantation of the artificial limb. The learned counsel for the respondent submits that no amount was claimed for implantation

of artificial limb before the learned Tribunal. In this regard, it is noted that the learned Tribunal ought to have conducted an enquiry into the claim under Section 168 of the Motor Vehicles Act instead of leaving the appellant to the mercy of the circumstances. The Claims Tribunals have been constituted to advance speedy remedy to the victims of the road accidents and, therefore, the duty has been casted on the Tribunals to conduct an enquiry. Section 169 of the Motor Vehicles Act provides that the Claim Tribunals shall follow such summary procedure as it thinks fit. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 (7) provides that the Claim Tribunal may during the course of enquiry visit the place where the accident took place or examine any person relevant to the proceedings. In the case of **Saramma Scaria vs. Mathai, 2003 ACJ 213,** the Kerala High Court observed as under:

> **"4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased.**

Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal, AIR 1980 SC 1354 Supreme Court has reminded the Claim Tribunals stating as follows:

> **"Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed**
> **by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes."**

11. Considering the evidence of PW-1 and PW-2 and the quotation-Ex.P-1, Rs.3,03,500/- is awarded to the appellant for implantation of the artificial limb.

12. With respect to the loss of income due to the permanent disability, the learned Tribunal has not awarded any

compensation. The appellant was studying in class 7th at the time of the accident. Despite the permanent disability, the appellant somehow completed the education and has obtained Degree in Computer Applications but she is not able to secure any job due to the permanent disability. The appellant has stated in her evidence before this Court that her other colleagues are earning to the tune of Rs.20,000/- to Rs.25,000/- per month. Although there is no proof of the actual earning of the appellant, but considering the education and qualifications of the appellant, the earning capacity can be calculated. In the case of **DTC vs. Sudarshan Yadam 1995 ACJ, 393**, the victim was a qualified engineer and was studying in MBA second year at the time of the accident. The victim suffered a fatal accident in the year1980. The learned Tribunal assessed the prospective dependency at Rs.1,000/- per month which was enhanced to Rs.2,000/- per month by the High Court. In the case of **Hazi Zenullah Khan vs. Nayar Mahapalika, 1994 ACJ 1993**, the deceased, a student of B.Sc. first year, suffered a fatal accident in the year 1971 and the compensation was awarded on the basis of his earning capacity.

13. Considering the facts and circumstances of this case and

taking conservative view of the matter, the earning capacity of the appellant in this case is taken to be Rs.6,500/- per month. The appellant was aged about 13 years at the time of the accident and applying the multiplier of 18, the loss of income is assessed to be Rs.14,04,000/-. The deceased has suffered 100% disability in relation to her right lower limb. However, considering the implantation of the artificial limb, the earning capacity of the appellant in relation to the entire body is taken to be 50%. The loss of earning capacity on the basis of 50% of the earning capacity is computed to be Rs.7,02,000/- (Rs.14,04,000/- divided by 2).

14. The learned Tribunal has awarded Rs.50,000/- towards permanent disability and Rs.20,000/- towards pain and agony to the appellant. No compensation has been awarded for loss of amenities of life. In the case of **Virender Singh vs. Anand Prakash, FAO No.192/1990** decided on 6th August, 2007, this Court has awarded Rs.1,50,000/- towards pain and suffering, Rs.1,50,000/- towards loss of amenities of life, Rs.50,000/- towards depression and mental stress in life and Rs.1,00,000/- towards loss of matrimonial prospects in respect of the victim who suffered

100% disability in a road accident dated 22nd November, 1980. Following the aforesaid judgment and considering the facts and circumstances of this case, the compensation for pain and suffering is enhanced from Rs.20,000/- to Rs.1,00,000/-. The compensation of Rs.50,000/- awarded for permanent disability is enhanced to Rs.1,00,000/- for loss of amenities of life and permanent disability.

15. The learned Tribunal has awarded Rs.1 lakh on account of marital status which is fair and reasonable and does not call for any interference.

16. The learned Tribunal has awarded Rs.20,000/- for purchase of medicines which appears to be low considering the six surgeries underwent by the appellant. However, in the absence of any evidence with respect to the expenses on medical treatment, the award of Rs.20,000/- is not being interfered with.

17. The learned Tribunal awarded Rs.10,000/- for conveyance and Rs.10,000/- for special diet. The compensation of Rs.10,000/- towards special diet does not call for any interference. However, considering the 100% permanent disability of the right lower limb

due to amputation of right leg, the compensation of Rs.10,000/- for conveyance is enhanced to Rs.30,000/-.

18. The total compensation payable to the appellant comes to Rs.16,24,000/- as per break up given hereunder:-

1)	Expenses on account of Treatment/purchase of medicine	-	Rs.20,000/-
2)	Expenses on account of conveyance charges	-	Rs.30,000/-
3)	Expenses on account of special diet	-	Rs.10,000/-
4)	Expenses on account of pain and suffering	-	Rs.1,00,000/-
5)	Expenses on account of marital status	-	Rs.1,00,000/-
6)	Expenses on account of loss of amenities of life and for permanent disability	-	Rs.1,00,000/-
7)	Compensation for loss of income	-	Rs.7,02,000/-
8)	Compensation towards cost of artificial limb	-	Rs.3,03,500/-
	Total	**-**	**Rs.13,65,500/-**

19. The aforesaid amount of compensation is higher than the amount claimed which is permissible in law in view of the judgment in the case of **Nagappa vs. Gurudayal Singh, AIR 2003 SC 674** where the Hon'ble Supreme Court has held that claimants are entitled to just compensation and they can be awarded higher

compensation than the compensation claimed.

20. The appeal is accordingly allowed and the award amount is enhanced from Rs.2,10,000/- to Rs.13,65,500/-

21. The learned Tribunal has awarded interest @12% per annum which is not disturbed on the original award amount of Rs.2,10,000/-. There shall be no interest on the cost of Rs.3,03,500/- towards the implantation of artificial limb as the same has yet to be implanted. There shall also be no interest on the loss of income as the appellant has completed her education in 2002. However, on the remaining enhanced amount of Rs.1,50,000/- towards compensation for pain and suffering, loss of amenities of life and conveyance, the appellant shall be entitled to interest @7.5% from the date of filing of the petition till date of payment.

22. The respondent is directed to deposit the entire enhanced amount along with interest with this Court within 40 days.

23. With respect to the disbursement of the award amount, the order shall be passed on the next date of hearing.

24. Vide order dated 19th May, 2009, notice was issued to the

Government of NCT of Delhi to place on record the present status of the Draft Delhi Motor Accident Claims Tribunal Rules. Mr. V.K. Tandon, Advocate for Government of NCT of Delhi submits that the Draft Delhi Motor Accident Claims Tribunal Rules were published in the Delhi Gazette on 3rd September, 2008 and the objections/suggestions were invited in pursuance to which the Delhi Police has submitted some suggestions on 3rd March, 2009 and the Draft Rules are pending for approval before the Cabinet of the Delhi Government. Mr. Tandon further submits that the Rules shall be notified after the approval by the Cabinet.

25. It is noted that the Draft Rules were drafted in the year 1998 by the Registrar (Vigilance) of this Court, who was the Motor Accidents Claims Tribunal from 1996 to 1998 and the same were sent by this Court to the Commissioner (Transport), Government of NCT of Delhi on 3rd March, 1999. The Draft Rules were initially published in Delhi Gazette on 16th August, 2001 inviting objections from the public but despite a lapse of more than 8 years thereafter, the Rules have not yet been notified.

26. Be that as it may, the Government of NCT of Delhi is advised to expedite the consideration of the said Rules and the same may

be notified as expeditiously as possible preferably within a period of four weeks. Some of the suggestions of this Court to be incorporated in the Rules are as under:-

(i) In Form A under Rules 3, 5 and 7, the following paragraphs be added:-

"15. In case of death: Names and addresses of the next of kin of the deceased.

16. In case of injury: Nature of injuries suffered.

17. Names and addresses of the eye-witnesses.

18. In case of transport vehicles:
(i) Particulars of the permit.
(ii) Particulars of the fitness certificate".

(ii) New Rule 3 (1) (h):-

"The Investigating Officer shall produce the driver, owner and eye-witnesses of the accident before the Motor Accident Claims Tribunal along with the Report under Section 158 (6) of the Motor Vehicles Act or on the subsequent date whereupon the Tribunal shall record their statement relating to the driving licence, registration cover, insurance policy, fitness, permit etc. of the offending vehicle."

(iii) New Rule 14(2a) and 14(2b):-

"14(2a). On receipt of the notice from the Claims Tribunal along with the Accident Information Report and the accompanying documents, the Insurance

Company shall immediately appoint an investigator to ascertain the age, income, occupation and number of dependents of the deceased victim in death cases and the age, occupation, income, nature of injuries and likely expenditure on treatment in injury cases. The investigator shall also verify the Driving Licence of the driver of the offending vehicle."

14(2B). "The Insurance companies shall file the written statement before the Claims Tribunal within 30 days of receipt of notice. The reply shall contain the following particulars:-

(i) Age, occupation and number of dependants of the deceased in death cases and age, occupation, income and nature of injuries and likely expenditure on treatment in injury cases;

(ii) Computation of compensation according to the insurance company; and

(iii) Disclosure Statement about the settlement of own damage claim of the offending vehicle.

(iv) Defences under Section 149 of the Motor Vehicles Act and material in support of the defences as verified by their investigator.

(v) If no defence under Section 149 of the Motor Vehicles Act is available in a given case, the Insurance Company shall deposit the admitted amount of liability along with the reply before the Claims Tribunal.

(vi) Name and designation of the officer who has examined the case and on whose instructions the reply has been filed."

27. The suggestions (i) and (ii) have already been accepted by

the Delhi Police in FAO No.842/2003 which is recorded in their affidavit dated 3rd June, 2009 and the order dated 8th June, 2009.

28. The Delhi Motor Accident Claims Tribunal Rules, 2008 shall streamline the procedural law relating to the compensation to the victims of the road accident and, therefore, the expeditious notification of the same is in public interest.

29. Copy of this order as well as the order dated 8th June, 2009 and the affidavit of Delhi Police dated 3rd June, 2009 in FAO No.842/2003 be furnished to Mr. V.K. Tandon, Advocate under signatures of Court Master.

30. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

31. Renotify for 8th July, 2009.

J.R. MIDHA, J

JUNE 22, 2009
aj/mk

39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO No. 884/2003

% Date of decision: 22nd May, 2009

SOMARI DEVI & ORS. ..... Appellants
Through : Mr. P.K. Sharma, Adv.

versus

RAGWAR SINGH & ORS. ..... Respondents
Through : Mr. Ram N. Sharma and
Mr. Abhishek, Advs. for R – 4.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby the learned Tribunal has dismissed the claim petition filed by the appellants.

2. The accident dated 4th January, 1998 resulted in the death of Jokhu Ram. The deceased was a Contractor and was going from Sector-11, Rohini to his house on foot. Two labourers were

accompanying the deceased. The deceased was crossing the road near Lok Nayak Apartments, Sector-7, Rohini, Delhi, when he was hit by truck bearing No.HR-38-BG-6052 coming from Rithala side at a very high speed and being driven in a rash and negligent manner and without blowing the horn. The deceased sustained fatal Injuries on his head and other parts of the body and was initially taken to Hindu Rao Hospital which referred him to Ram Manohar Lohia Hospital where he expired on 5th January, 1998.

3. The deceased was survived by his widow, two minor sons aged about 12 and 7 years, a minor daughter aged about 3 years and father who filed the claim petition before the learned Tribunal.

4. The widow of the deceased appeared as PW-1 and deposed that the deceased was a Contractor doing flooring work earning Rs.6,000/- to Rs.7,000/- per month and at the time of the accident, he had a work contract at Sector-7, Rohini. The deceased was 35 years at the time of his death. PW-1 tendered in evidence the chargesheet – Ex.P-1, mechanical inspection report – Ex.P-2, post-mortem report – Ex.P-3, Registration Cover – Ex.P-4, seizure memo of truck – Ex.P-5, FIR – Ex.P-6, seizure memo of driving licence – Ex.P-7, driving licence – Ex.P-8, site plan – Ex.P-9 and death certificate – Ex.P-10.

5. The appellant produced the eye-witness, PW-2 who deposed that he was accompanying the deceased on 4th January, 1998 at about

10:55 pm and while crossing the road near Lok Nayak Apartment, Sector-7, Rohini, the deceased was hit by truck bearing No.HR-38-BG-6052 coming from Rithala side at a very high speed and driven in a rash and negligent manner.

6. The driver of the offending vehicle filed the written statement before the learned Tribunal and denied the involvement of the truck in the accident. The owner of the offending truck did not appear before the learned Tribunal and was proceeded ex-parte. The Insurance Company admitted the factum of insurance of the offending vehicle before the learned Tribunal.

7. The learned Tribunal dismissed the claim petition on the ground that the post-mortem report does not mention that the eye-witness, PW-2 identified the dead body of the deceased. The learned Tribunal further held that the MLC has not been proved by the appellants. It is further recorded that as per the FIR and chargesheet, no witness was found on the spot. The learned Tribunal observed that PW-2 has not stated the number of TSR in which he followed the PCR Jeep to the hospital. The name of PW–2 has not been recorded in the FIR. The seizure memo of the truck was prepared one day after the accident by the I.O. As per the chargesheet, R-1 surrendered before the Criminal Court on 19th January, 1998 but refused to submit himself to Test Identification Parade. The seizure memo of the truck was not

witnessed by PW-2. The learned Tribunal, therefore, gave a finding that PW-2 was not the actual eye-witness of the accident and was brought in as the witness subsequently. The learned Tribunal further observed that neither the identity of the deceased was established nor the identity of the person who was driving the truck has been established and there is no material on record to prove that Jokhu Ram sustained fatal injuries as a result of the accident caused by rash and negligent driving of the truck bearing No.HR-38-BG-6052. The learned Tribunal dismissed the claim petition for all these reasons.

8. The learned Tribunal has utterly failed to discharge the duty casted by Section 168 of the Motor Vehicles Act. Section 168 provides that the Tribunal shall hold an inquiry into the claim. Section 169 provides that the Claims Tribunal shall follow such summary procedure as it thinks fit subject to the Rules made in that behalf. Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the Claims Tribunal. Rule 118 of Delhi Motor Vehicles Rules, 1993 provides the procedure to be followed by the claims Tribunal. Rule 118(7) provides that the claims Tribunal may during the course of enquiry visit the site of accident or examine any person likely to be able to give information relevant to the proceedings.

9. The scheme of the Motor Vehicles Act and the Rules is that the Tribunal has to conduct an inquiry into the claim and a summary

procedure has to be evolved. The Act as well as Rules nowhere use the word “trial”.

10. In the case of **Saramma Scaria Vs. Mathai, 2003 ACJ 213,** the Kerala High Court observed as under:

> **“4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal, AIR 1980 SC 1354 Supreme Court has reminded the Claim Tribunals stating as follows:**
>
> **"Road accidents are one of the top killers in our country, specially, when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court**

should not succumb to niceties, technicalities and mystic maybes."

11. In **Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, 1999 ACJ 1129,** the division bench of Gujarat High Court observed as under:

> **"The thrust of the attack on judicial values is not so much that judges are consciously prejudiced, but that they are subconsciously influenced by the fact that they come from a narrow social stratum and reflect the values of a minority class. There can be no question but that subconscious influences of this kind do exist, but the submission made here is that the charge is prone to exaggeration.**
>
> **In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences, including those that tend to counteract and minimize prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules, the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice. It has to be remembered that cases are argued, often with great ingenuity, by counsel, and if one side puts forward an interpretation of a statutory provision or a precedent, which cannot be countered plausibly, the judge has to decide accordingly, however much his own wishes are to the contrary".**

12. The learned Tribunal could have invoked Section 165 of the Indian Evidence Act which is reproduced hereunder:-

> **"SECTION 165. JUDGE'S POWER TO PUT QUESTIONS OR ORDER PRODUCTION** –
>
> **The Judge may, in order to discover or to obtain**

proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."

13. This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its

judgment on any but relevant statements.

14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. **Mr. Edmund Burke** arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done effectively, and to act his own part in it.

16. In **Bartly vs. State, 55 Nebr 294 : 75 N.W.832 Harrison, C.J.,** said:

> **"It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness".**

17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge

is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

18. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:-

> **"Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.**
>
> **That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly then he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents,**

and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."

19. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided.

20. The learned Tribunal did not conduct the inquiry as envisaged in Section 168 of the Motor Vehicles Act. Although, the statement of PW-2 as well as the documents – Ex.PW-1 to Ex.PW-10 clearly proved that the deceased died in a road accident arising out of the rash and negligent driving of the vehicle bearing No.HR-38-BG-6052 by its driver, still if the Tribunal had any doubt about the factum of the accident, the Tribunal could have summoned the Investigating Officer and other witnesses recorded in the criminal case. Nothing prevented the Tribunal to summon the Investigating Officer or other witnesses to ascertain the truth but instead of conducting an enquiry, the learned Tribunal passed the order which is based on surmises and conjectures. The findings of the learned Tribunal are therefore set

aside.

21. The learned Tribunal has not computed the compensation. The evidence led by the appellants has been perused and the compensation is computed on the basis of the material on record.

22. The deceased was aged 35 years at the time of the accident as per death certificate – Ex.P-10. The deceased was survived by his widow, two minor sons, one daughter and father at the time of the accident. The deceased was working as a Contractor for doing flooring work. It is alleged that the deceased was earning Rs.6,000/- per month. However, no document whatsoever has been placed on record to prove the income of the deceased. The income of the deceased is, therefore, taken according to the minimum wages for a skilled worker which was Rs.2,208/- at the time of the accident. Taking notice of the increase in the minimum wages over a period of 10 years due to inflation and price index and following the judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182; Lekh Raj vs Suram Singh, 2007 ACJ 2165** and **National Insurance Company Limited vs. Renu Devi, III (2008) ACC 134**, the income of the deceased for computation of compensation is taken to be Rs.3,312/- [(Rs.2,208 + Rs.2,208 x 2)/2]. 1/4th is deducted towards the personal expenses of the deceased and applying the multiplier of 16, the loss of dependency of the appellants is computed to be

Rs.4,76,928/-. Rs.10,000/- is awarded for loss of love and affection, Rs.10,000/- for loss of estate, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. The total compensation is computed at Rs.5,11,928/-.

23. The appeal is accordingly allowed and an award of Rs.5,11,928/- along with interest @7.5% per annum from the date of filing of the petition, i.e. 17th March, 1998 till realization is passed in favour of the appellants and against respondent No.4.

24. R4W1 is the witness from District Transport Office, Alwar who produced the original register pertaining to the year 1993 containing the entries from 17835 to 18404 and there is no entry in the name of Ragwar Singh. Copy of the extract from the register and the entry of 18th November, 1993, has been exhibited as Ex.R4W1/AR. Respondent No.4 produced another witness – R4W2 who proved the notice under Order 12 Rule 8 issued to the driver as well as the owner to produce the driving licence. Respondent No.4 has succeeded in proving that the photocopy of the driving licence placed on record from the criminal case was fake.

25. Respondent No.4 is, therefore, given the recovery rights to recover the award amount from respondents No.2 after making the payment to the claimants.

26. The learned counsel for the appellant submits that the father of

the deceased expired during the pendency of the petition and his share has devolved upon the appellants. The share of the appellants in the award amount shall be as under:-

Appellant No.1	:	60%
Appellants No.2 and 3	:	10% each
Appellant No.4	:	20%

27. The order with respect to the mode of investment shall be passed on the next date of hearing as this Court has directed LIC, SBI and other banks to formulate a special scheme for victims of road accident.

28. Renotify on 3rd July, 2009.

J.R. MIDHA, J

MAY 22, 2009
aj

2

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 347/2009

RAJIV DHAWAN & ANR ..... Appellants
Through : Mr. Dhirendra Singh, Adv.

versus

PHIRTU & ANR ..... Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 19.08.2009

MAC.APP. No.347/2009 and CM No.9958/2009

1. Issue notice to the respondents, returnable on 5th October, 2009.

2. Subject to the deposit of the principal award amount by the appellants with the Registrar General of this Court within four weeks, the execution of the impugned award shall remain stayed.

3. Appellant No.1 is the owner and appellant No.2 is the driver of the offending vehicle. The learned counsel for the appellants submit that the offending vehicle was not insured at the time of the accident. If that is so, the appellants have committed an offence under Section 196 of the Motor

Vehicles Act, 1988 for driving the uninsured vehicle. Section 196 of the Motor Vehicles Act, 1988 is reproduced hereunder:-

> "Section 196. Driving uninsured vehicle – Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

4. Notice be issued to the Investigating Officer of FIR No.648/06 dated 8th September, 2006 P.S. Jahangir Puri under Section 279/337 to explain why the appellants were not prosecuted under Section 196 of the Motor Vehicles Act, 1988

5. It is noted that in cases of the accident caused by uninsured vehicles, the police is not prosecuting the owners and drivers of the uninsured offending vehicles under Section 196 of the Motor Vehicles Act, 1988.

6. Notice be issued to the Commissioner of Delhi Police to explain why the owners and drivers of uninsured vehicles are not prosecuted under Section 196 of the Motor Vehicles Act, 1988.

The copy of this order be also sent to the Commissioner of Police.

J.R. MIDHA, J

AUGUST 19, 2009
mk

13.

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **MAC.APP. 347/2009**

RAJIV DHAWAN & ANR ..... Appellants
Through: Mr.Nitin Narang, Advocate.
ASI Vijender Singh, P.S.
Maurya Enclave.

versus

PHIRTU & ANR ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 30.11.2009

1. Investigating Officer ASI Vijender Singh, presently posted in Police Station Maurya Enclave is present in Court and has submitted reply to the notice dated 19th August, 2009. It is stated that the appellants were not prosecuted under Section 196 of the Motor Vehicles Act, 1998, due to inadvertence. The Investigating Officer has tendered unconditional apology. He further submits that a *kalandra* under Sections 146/196 of the Motor Vehicles Act, 1998 has been filed with the concerned Metropolitan Magistrate against the appellants.

2. Learned counsel for the appellants submits that the

appellants have settled this case with the claimants. Copy of

the settlement arrived at between the appellants and the claimants is placed on record. Copy of the settlement be handed over by learned counsel for the appellants to the Investigating Officer.

3. The claimants are not present in Court. The Investigating Officer is directed to produce them before this Court on 15th December, 2009.

J.R. MIDHA, J.

NOVEMBER 30, 2009
sb

16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.284/2008

% Date of decision: 12th November, 2009

HEAD OF DEPARTMENT, AIR FORCE
STATION AMLA & ANR ..... Appellants
Through : None.

versus

RAM KUMAR GIRI THR. LRS ..... Respondents
Through : Mr. Neeraj Aarora, Adv.
Mr. V.P. Choudhary, Sr. Adv.
as amicus curiae.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,74,488/- has been awarded to the claimants/respondents No.1 to 5.

2. On 22nd May, 1999 at about 6:30 am, the deceased, Ram Kumar Giri along with his mother, wife and children, was going from Delhi to Shani Dev Mandir, Kokla by Tata Sumo bearing No.HR-26H-2105 and

when they reached G.T. Road, Village Kulsipur, Palwal (Faridabad), the Air Force truck bearing No.BA No.89D 84861 came from the opposite direction on the wrong side of the road and hit the Tata Sumo resulting in grievous injuries to the deceased.

3. The deceased was sitting on the front seat of Tata Sumo besides the driver and he suffered fracture in both legs and left hand as well as injuries on the head and neck. The deceased suffered 74% disability due to the injuries suffered by him in the accident which resulted in his death on 31st October, 2006.

4. The deceased initially filed the claim petition for compensation in respect of injuries suffered by him. However, after his death, the deceased was substituted by his wife, three minor children and father who amended the claim petition and claimed the compensation for the injuries suffered by the deceased as well as the compensation arising out of the death of the deceased.

5. The offending vehicle was owned by Air Force and the claim petition was filed against the driver and Air Force as the owner of the offending vehicle.

6. Separate written statements were filed by the driver and owner of the offending vehicle before the learned Tribunal.

7. The driver of the offending vehicle admitted the accident. However, the driver denied that the accident occurred due to his rash

and negligent driving. It was submitted by the driver in the written statement that he changed the vehicle lane due to blockage of road at different places. It was further submitted that the Tata Sumo was being driven rashly and negligently at a very high speed and the accident occurred due to the rash and negligent driving of Tata Sumo.

8. In the separate written statement, the Air Force also admitted that their driver changed the lane and came on the wrong side of the road due to the blockage of road at three different places. It was further submitted that the driver had no other alternative but to come on the wrong side of the road due to blockage of the road and the same was done by other vehicles plying on the road. The relevant portion of para-1 of the reply on merits is reproduced hereunder:-

> "The allegations leveled by the petitioners that Shri Ashok Kumar was driving the service vehicle negligently and rashly are absolutely false and strongly denied. The fact is that Shri Ashok Kumar had changed the vehicle lane of his service transport from main Palwal road to Mathura road due to the blockage of road at three different places and therefore Shri Ashok Kumar was not intentionally driving the service vehicle on wrong side. The circumstances developed due to blockage of road had made him to follow the wrong side, since he did not have any other alternative. The same was being done by other vehicles plying on that road. It is further submitted that, infact, TATA Sumo was being driven rashly and its driver did not take due precautions to avoid the accident. The passengers of TATA Sumo were immediately taken to nearby hospital and they are promptly attended to."

9. The deceased appeared in the witness box as PW-1 and deposed that he and his family were going from Delhi to Shani Dev Mandir,

Kokla by Tata Sumo bearing No.HR-26H-2105 and when they reached Palwal, a military truck bearing BA No.89D 84861 came from front side at a high speed in a rash and negligent manner and hit the Tata Sumo due to which the deceased and his mother received injuries. PW-1 further deposed that he became unconscious after the accident and was taken in an ambulance to General Hospital where he regained consciousness and Police recorded his statement. PW-1 was thereafter referred to St. Stephen's Hospital, Delhi on the same day. The witness suffered fracture in both legs and left hand and both the bones of the thigh were broken apart from injuries on neck and head. PW-1 remained hospitalized in private ward for 1½ months and stated to have incurred Rs.5,00,000/- on his treatment, conveyance and special diet. PW1 was confined to bed and one attendant remained with him whole day. PW1 proved the treatment record - Ex.PW1/F to Ex.PW1/Z and Ex.PW1/A1 to Ex.PW1/44. PW1 also proved the certified copies of the criminal record Ex.PW1/A to Ex.PW1/E. PW1 proved the documents relating to the treatment and the bills for purchase of medicines as Ex.P-1 to Ex.P-36.

10. In cross-examination, PW-1 was asked as to how many persons were travelling in Tata Sumo to which PW-1 replied that 6-7 persons, namely, the deceased, his mother, wife, two daughters and son were travelling in the vehicle and the deceased was sitting on the front seat.

The witness denied that there was a traffic block on the other side of the road and the entire traffic was diverted on the right side. PW-1 further stated in cross-examination that the speed of Tata Sumo was about 20 kms per hour at the time of the accident. The witness was also cross-examined about his health, occupation and income.

11. The witness from St. Stephen's Hospital appeared as PW-2 and proved the treatment record - Ex.PW2/1 to Ex.PW2/5. The witness also proved the attested copies of medical bills as Ex.PW2/6 collectively. PW-2 also deposed that the deceased was admitted in the St. Stephen's Hospital five times. PW-2 was not at all cross-examined by the appellants despite opportunity given.

12. The appellants produced four witnesses. The driver of the offending vehicle appeared as R1W1 and admitted that he changed the vehicle lane due to blockage of the road at three different places as he did not have any other alternative. R1W1 further admitted that he was following other vehicles which were using the wrong path due to blockage. Paras 3 and 4 of the examination-in-chief of R1W1 are reproduced hereunder:-

> "3. That on the day of accident, the deponent had changed the vehicle lane from his service transport from main Palwal Road to Mathura Road due to the blockage of road at three different places as he did not have any other alternative.

> 4. That he was driving very cautiously and normal speed and was following the other vehicles, which were using alternative path due to the blockage."

13. The Sqn. Ldr., V.G. Nadkarni appeared as R2W1 and also admitted that the driver, Ashok Kumar changed the lane of his vehicle due to blockage of the road and was following other vehicles which were also using alternative path at the relevant time due to blockage. R2W1 placed on record the copy of the Departmental Inquiry Proceedings – Ex.R2W1/1. This witness also imputed the negligence to the driver of Tata Sumo. Para 6 and 7 of the affidavit of R2W1 are relevant and are reproduced hereunder:-

> "6. The deponent says that on 22.05.1999 the respondent no.01 Ashok Kumar had to change the vehicle lane of his service transport from main Palwal road to Mathura road, due to blockage of the road, which was blocked due to an accident.
>
> 7. The deponent says that the respondent no. 01 was driving very cautiously and normal speed and was following the other vehicles, the other vehicles were also using alternate path on the relevant day due to blockage."

In cross-examination, R2W1 admitted that he had no personal knowledge of the facts of the case and came to know of the facts only on the perusal of the file of the investigation. R2W1 further admitted that the deceased was not joined in the departmental enquiry conducted by Air Force.

14. Umed Singh appeared as R2W2. R2W2 was escorting the offending vehicle at the time of the accident. R2W2 admitted that the offending vehicle came on wrong side of the road as other vehicles were also using alternative path due to blockage and the offending vehicle was following the other vehicles on a very normal speed. R2W2 also imputed the negligence on the Tata Sumo. Para 3 of the affidavit of R2W2 is reproduced hereunder:-

> "3. That the said service transport was taken to right side of divider because the left way was blocked due to accident. The other vehicles were also using alternate path due to the blockage and we were following the other vehicles on a very normal speed as around 10 KM/n."

15. Subedar Nathi Ram appeared in the witness box as R2W3 and deposed that a wheat loaded truck was lying in front of his mill due to which the transport was diverted from Palwal Road to Mathura Road and the vehicles were using the alternative road due to blockage of road. In cross-examination, R2W3 admitted that he did not witness the accident and he went to the accident site after receiving the information. R2W3 did not go to the Police Station and was not examined by the Police.

16. The learned Tribunal held that the accident in question occurred due to the rash and negligent driving of the Air Force vehicle by its driver.

17. The learned counsel for the appellant has challenged the finding of the rash and negligent driving of the offending vehicle by its driver and has submitted that the accident occurred due to the rash and negligent driving of Tata Sumo in which the deceased was travelling. There is no challenge to the quantum of compensation computed by the learned Tribunal. The respondents have filed counter claim to seek the enhancement of the award amount.

18. The learned counsel for the appellant has submitted that there was a convoy of three vehicles of Air Force and there was obstruction on the national highway near Palwal at three places due to which the road was blocked and, therefore, the convoy came on the wrong side of the road as there were other vehicles also which had come on the wrong side of the road. There was a road divider and two vehicles of the convoy came on the correct side of the road after travelling about 1/2 km on the wrong side but the third vehicle of the convoy met with an accident with a Tata Sumo. The learned counsel for the appellant further submits that the Tata Sumo was overtaking two other vehicles and in the process met with an accident with the Air Force convoy.

19. The offending Air Force truck was on the wrong side of the road at the time of the accident which is admitted by the driver of the Air Force truck in his written statement as well as in his testimony as R1W1. The blockade of road on the correct side and other vehicles

having come on the wrong side of the road is no justification for coming on the wrong side of the road. Merely because there was blockade on the correct side and other vehicles had come to wrong side of the road, the driver of the Air Force truck did not have the right to come on the wrong side of the road. Admittedly, there was no traffic policeman on the site who diverted the traffic on the wrong side. The driver of the Air Force truck neither put on the head lights/emergency lights nor blew the horn so as to give an indication to the traffic coming from the opposite direction. The driver of the Air Force truck was clearly rash and negligent. The finding of rash and negligence of the Air Force truck is, therefore, upheld.

20. The second contention of learned counsel for the appellant is that the driver of the Air Force vehicle was performing the sovereign function and, therefore, Air Force is not liable on the ground of sovereign immunity. The learned counsel refers to and relies upon the following judgments in support of the plea of doctrine of sovereign immunity:-

(i) Secretary of State vs. A. Cockcraft, AIR 1915 Madras 993.

(ii) Kasturi Lal Ralia Ram Jain vs. State of U.P., AIR 1965 SC 1039.

(iii) N. Nagendra Rao & Co. vs. State of A.P., AIR 1994 SC 2663.

(iv) Bakshi Amrik Singh vs. Union of India, 1974 ACJ 105 (P&H).

(v) Thangarajan vs. Union of India, AIR 1975 Madras 32.

(vi) Shakuntala Devi vs. Union of India, 1976 ACJ 97.

21. The learned counsel for the claimants submit that:-

(i) The appellant did not raise the plea of sovereign immunity as a defence before the learned Tribunal in its written statement.

(ii) No issue was, therefore, framed by the learned Tribunal on the issue of sovereign immunity.

(iii) No evidence was even led before the learned Tribunal on the issue of sovereign immunity.

(iv) The plea of sovereign immunity has been raised for the first time in the appeal before this Court.

(v) The doctrine of sovereign immunity is not applicable to the claim for compensation under the Motor Vehicles Act.

(vi) The Motor Vehicles Act is a special law to govern the payment of compensation to the victims of the road accident and it covers the vehicles owned by the Central Government used for defence purposes and no exception has been carved out in the law with respect to the tortious liability arising out of use of Government vehicle performing sovereign functions.

22. Mr. V.P. Choudhary, Senior Advocate as amicus curiae and counsel for the claimants submits that the doctrine of sovereign immunity pleaded by the appellant is not applicable to the claim for compensation under the Motor Vehicles Act, 1988. Mr. Choudhary submits that the Motor Vehicles Act, 1988 is a special law to govern the payment of compensation to the victims of the road accidents and it covers the vehicles owned by the Central Government used for defence purposes and no exception has been carved out in the law with respect to the tortuous liability arising out of the use of the government vehicle for defence purposes. Mr. Choudhary has referred to the following provisions of the Motor Vehicles Act, 1988 in the regard:-

(i) Section 2(30) defines the “owner” of a motor vehicle and it includes all vehicles including the vehicles owned by the Air Force.

(ii) Section 2(20) defines the “licencing authority” and Section 2(37) defines the “registering authority”, which are empowered to register and issue licences even in respect of Air Force vehicles.

(iii) Section 18 provides that the authority prescribed by the Central Government may issue driving licence to drive motor vehicles which are under the exclusive control of the Central Government and are used for government purposes relating to the defence of the country and unconnected with any commercial enterprise.

(iv) Section 60 provides for registration of vehicles belonging to the Central Government and used for defence of the

country.

(v) Section 140(1) provides for payment of compensation on the principle of no fault liability on the owner of the motor vehicle.

(vi) Section 144 provides that the provisions of Chapter X shall have effect notwithstanding anything contained in any other provision of the Motor Vehicles Act or any other law for the time being in force.

(vii) Section 146(2)&(3) provides that the Government may exempt the requirement of compulsory insurance in respect of Government vehicle provided that the fund is established and maintained for meeting any law arising out of the use of the government vehicle.

(viii) Section 165 provides for constitution of the Motor Accident Claims Tribunal for the purpose of adjudicating the claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles.

(ix) Section 168 provides the payment of the compensation by the insurer or owner or driver of the offending vehicle involved in the accident.

23. The learned amicus curiae and the counsel for the claimants have referred to and relied upon the following judgments:-

(i) State of Rajasthan vs. Vidhyawati, AIR 1962 SC 933.

(ii) Pushpa Thakur vs. Union of India, AIR 1986 SC 1199.

(iii) Saheli, a Women's Resources Centre vs. Commissioner of Police, Delhi, AIR 1990 SC 513.

(iv) N. Nagendra Rao and Co. vs. State of Andhra Pradesh, AIR 1994 SC 2663.

(v) Common Cause, a Registered Society vs. UOI, AIR 1999 SC 2979.

(vi) State of A.P. vs. Challa Ramkrishna Reddy, AIR 2000 SC 2083.

(vii) Usha Aggarwal vs. Union of India, AIR 1985 P&H 279.

(viii) Gurbachan Kaur vs. Union of India, 2002 ACJ 666 (PH).

(ix) State of Rajasthan vs. Shekhu, 2006 ACJ 1644 (Rajasthan HC).

24. Considering the important question of law involved in this case, Mr. Parag Tripathi, learned ASG was requested to examine the plea of sovereign immunity set up by the appellants and assist this Court. Mr. Parag Tripathi, appeared before this Court on 10th July, 2009 and submitted that the doctrine of sovereign immunity which is based on the maxim that 'King can do no wrong' has no place in Indian jurisprudence. Mr. Tripathi has made submissions on the law relating to sovereign immunity in India as well as in England, United States, Australia, Canada, Singapore, South Africa and Pakistan. Mr. Tripathi, learned ASG has referred to the following judgments:-

(i) Peninsular and Oriental Steam Navigation Co.

(ii) State of Rajasthan vs. Vidyawati, AIR 1962 SC 933.

(iii) Kasturilal Ralia Ram Jain vs. State of Uttar Pradesh, AIR 1965 SC 1039, Pr.21 pg.1046.

(iv) Pushpa Thakur vs. UOI & Anr., AIR 1986 SC 1199.

(v) Nagendra Rao & Co. vs. State of Andhra Pradesh, (1994) 6 SCC 205.

(vi) State of Andhra Pradesh vs. Challa Ramkrishna Reddy, AIR 2000 SC 2083.

(vii) Dalehite v. United States, 346 US 15.

(viii) Royster v. Cavey, 1947 KB 204.

25. The doctrine of sovereign immunity was considered by the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Vidhyawati** (supra). In that case, the driver of a Government jeep knocked down a pedestrian which resulted in his death. The legal representatives of the deceased sued the Government of Rajasthan and the driver for compensation for the tortious act of the driver. The suit was decreed by the Trial Court and upheld by the High Court in appeal. The State of Rajasthan filed the appeal before the Hon'ble Supreme Court on the ground that it is not liable for the tortious act of its employees. The appeal was dismissed. The Hon'ble Supreme Court held that the rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The findings of the Hon'ble Supreme Court are as under:-

> "We have not been shown any provision of law, statutory or otherwise, which would exonerate the

Rajasthan Union from vicarious liability for the acts of its servant, analogous to the Common Law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom that that rule had become outmoded in the context of modern development is statecraft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2(1) of the Act provides that the Crown shall be subject to all those liabilities, in tort, to which it would be subject if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of the Act. As already pointed out, the law applicable to India in respect of torts committed by a servant of the Government was very much in a advance of the Common law, before the enactment of the Crown Proceedings Act, 1947, which has revolutionised the law in the United Kingdom, also." (para 14)

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own Courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sue in tort or in contract, and the Common Law immunity never operated in India." (para 15)

"When the rule of immunity in favour of the Crown based on common Law in the United Kingdom has disappeared from the land of its birth, there is no legal warrant for holding that it has any

> validity in this country, particularly after the Constitution. As the cause of action in this case arose after the coming into effect of the Constitution in, our opinion, it would be only recognising the old established rule, going back to more than 100 years at lest, if we upheld the vicarious liability of the State. Art. 300 of the Constitution itself has saved the right of Parliament or the Legislature of a State to enact such law as it may think fit and proper in this behalf. But so long as the Legislature has not expressed its intention to the contrary, it must be held that the law is what it has been ever since the days of the East India Company." (para 15)

26. The doctrine of sovereign immunity again came up for consideration before the Hon'ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra). In that case, the army truck rammed into another vehicle resulting in fracture of both legs and amputation of right leg of the victim. The driver of the military truck was found to be negligent. The principle of sovereign immunity of the State was rejected by the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the principle of sovereign immunity of State for the acts of its servants has no application in such cases and Union of India is clearly liable to pay compensation to the victims for negligence of the driver of the military truck. It was held as under:-

> "We are of the view that on the facts and circumstances of the case **the principle of sovereign immunity of the State for the acts of its servants has no application** and the High Court was in error in rejecting the claim of the appellant for compensation on that ground. It was a concurrent finding of fact arrived at by the Motor Accidents Claims Tribunal, Gurgaon (hereinafter

> referred to as Tribunal) as well as the High Court that the driver of the military truck was negligent and that the accident resulting in the fracture of both the legs and amputation of the right leg of the appellant was caused as a result of such negligence. The Union of India was, therefore, clearly liable to pay compensation to the appellant for the negligence of the driver of the military truck." (para 1)

27. In the case of **Saheli, a Women's Resources Centre vs. Commissioner of Police** (supra)**,** the Hon'ble Supreme Court following the judgment of **State of Rajasthan vs. Vidhyawati** (supra) held that the State was responsible for the tortious acts of its employees.

28. The doctrine of sovereign immunity again came up for consideration before the Hon'ble Supreme Court in the case of **N. Nagendra Rao and Co. vs. State of Andhra Pradesh** (supra) where the Hon'ble Supreme Court held that the doctrine of sovereign immunity has no relevance in the present day context. The findings of the Hon'ble Supreme Court are as under:-

> "Sovereign immunity as defence was, thus, never available where the State was involved in commercial or private undertaking nor it is available where it officers are guilty of interfering with life and liberty of a citizen not warranted by law. In both such infringement the State is vicariously liable and bound, constitutionally, legally and morally, to compensate and indemnify the wronged person." (para 13)

> "That apart, the doctrine of sovereign immunity has no relevance in the present day context when the concept of sovereignty itself has undergone drastic change. Further, whether there

was any sovereign in the traditional sense during British rule of our country was not examined by the Bench in Kasturi Lal case (supra) though it seems it was imperative to do so." (para 14)

"The old and archaic concept of sovereignty thus does not survive. Sovereignty now vests in the people." (para 21)

"In the modern sense the distinction between sovereign or non-sovereign power thus does not exist." (para 23)

"But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "sovereign and non-sovereign or "governmental or non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens

> are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of sovereignty found it place either because of the financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation, or because of 'logical and practical ground', or that 'there could be no legal right as against the State which made the law' gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."(para 24)

29. In the case of **Common Cause, a Registered Society vs. UOI** (supra), the Hon'ble Supreme Court held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The findings of the Hon'ble Supreme Court are as under:-

> "The decision in Kasturilal' case has apart from being criticised (See Constitutional Law of India by Seervai), not been followed by this Court in subsequent decisions and, therefore, much of its efficacy as a binding precedent has been eroded."(para 77)

30. In the case of **State of Andhra Pradesh vs. Challa Ramkrishna**

Reddy (supra), the Hon'ble Supreme Court held that **the principle of sovereign immunity has no place in Indian jurisprudence where the power vests in the people who elect the representatives to run the Government which has to act in accordance with provisions of the Constitution and would be answerable to the people**. It was held as under:-

> "Immunity of State for its sovereign acts is claimed on the basis of the old English Maxim that the King can do no wrong. But even in England, the law relating to immunity has undergone a change with the enactment of Crown Proceedings Act, 1947."(para 19)
>
> "Thus, the Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants." (para 20)
>
> "The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof." (para 21)
>
> "Right to Life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right." (para 22)
>
> "The law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail." (para 32)

31. Apart from the Hon'ble Supreme Court judgments, there have been number of High Court judgments where the High Court discarded the doctrine of sovereign immunity in the cases of road accidents following the aforesaid judgments of the Hon'ble Supreme Court. The judgments are as under:-

(a) **Usha Aggarwal vs. Union of India** (supra).

A military truck carrying arms met with an accident with a motorcycle resulting in the death of a pillion rider. The legal representatives of the deceased victim filed the claim petition before the learned Tribunal which was dismissed on the ground that the truck was engaged in performance of sovereign functions of the State. The appeal was filed before the Punjab & Haryana High Court. Following the judgment of the Hon'ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra)**,** the High Court allowed the appeal.

(b) **Gurbachan Kaur vs. Union of India** (supra).

A military lorry hit a motorcyclist resulting in his death. The legal representatives of the victim filed the claim petition before the Claims Tribunal which was defended on the principle of sovereign immunity. The High Court rejected the plea of sovereign immunity.

(c) **State of Rajasthan vs. Shekhu** (supra).

The Government jeep did hit a cyclist resulting in his death. The legal representatives of the deceased filed the claim petition before the Claims Tribunal which passed an award for Rs.2,36,000/- which was challenged by the State of Rajasthan on the principle of sovereign immunity. Following the judgments of the Hon'ble Supreme Court, the Rajasthan High Court rejected the plea of sovereign immunity and held as under:-

> "23. The Hon'ble Apex Court in the case of Pushpa Thakur v. Union of India, 1984 ACJ 559 (SC), has held that the doctrine of sovereign immunity has no application so far as claims for compensation under Motor Vehicles Act are concerned. That apart, after the amending Act 100 of 1956, by which section 110-A of Motor Vehicles Act, 1939, was inserted, the distinction of sovereign and non-sovereign acts of the State no longer existed as all owners of vehicles were brought within the scope of that section. Section 166 of the new Act of 1988, reproduces section 110-A of the old Act. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra."

32. The appellants have relied upon the judgment of **Secretary of State vs. A. Cockcraft** (supra) which relates to pre-constitutional era based on outdated notion that the 'King can do no wrong'. This judgment does not hold good after the judgments of the Hon'ble Supreme Court in the cases of **State of Rajasthan vs. Vidhyawati** (supra), **Pushpa Thakur vs. Union of India (Supra)** and other

judgments. The appellants have next referred to the judgment of the Hon'ble Supreme Court in the case of **Kasturilal Ralia Ram Jain vs. State of Uttar Pradesh** (supra) which has been considered but not followed by the Hon'ble Supreme Court in several cases. The Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. Challa Ramkonda Reddy** (supra) held that the maxim 'King can do no wrong' has no place in Indian jurisprudence where the power vests not in the crown but in the people who elect their representatives to run the Government which has to act in accordance to the Constitution and is answerable to the people for violation thereof. It was further held that in the process of judicial advancement, **Kasturi Lal's** case has paled into insignificance and is no longer of any binding value. In another case of **Common Cause, a Registered Society vs. UOI** (supra), the Hon'ble Supreme Court held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The findings of the Hon'ble Supreme Court are as under:-

> "The decision in Kasturilal' case has apart from being criticised (See Constitutional Law of India by Seervai), not been followed by this Court in subsequent decisions and, therefore, much of its efficacy as a binding precedent has been eroded."

The judgment of **N. Nagendra Rao and Co. vs. State of Andhra Pradesh** (supra) does not support the appellant. The Hon'ble

Supreme Court has taken note of the decision of Supreme Court in **Pushpa Thakur case** (supra) in para 13 of the said judgment while noting that the field of operation of the principle of sovereign immunity has been substantially whittled down by the subsequent decisions of the apex Court and observed as under:-

> "In Pushpa Thakur v. Union of India and Anr. (1984) ACJ SC 559, this Court while reversing a decision of the Punjab & Haryana High Court (1984 ACJ 401) which in its turn placed reliance on a Full Bench decision of that very Court in Bakshi Amrik Singh v. Union of India (1973) PLR Vol.75 p.1 : 1974 ACJ 105 held that where the accident was caused by negligence of the driver of military truck the principle of sovereign immunity was not available to the State."

The appellants have also referred to and relied upon the the judgment of **Bakshi Amrik Singh vs. Union of India** (supra) which has been overruled by the Hon'ble Supreme Court in the case of **Pushpa Thakur vs. Union of India** (supra). The judgments of **Thangarajan vs. Union of India** (supra) and **Shakuntala vs. Union of India** (supra) referred to by the appellants also do not hold good in view of the judgment of the Hon'ble Supreme Court in **Pushpa Thakur's** case.

33. The law with respect to the doctrine of sovereign immunity is clear and well settled and the following principles of law emerge from the judgments of the Hon'ble Supreme Court:-

(I) **The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now.**

(II) **The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof.**

(III) **The State is liable for the acts of its employees and there exists no distinction between sovereign and non-sovereign acts and like ordinary citizen, the State would be liable for the act done by its employees.**

(IV) **The plea that the driver was on sovereign duty is not open to the Govt. vis-à-vis its citizens especially in a welfare State.**

(V) **Even in advanced countries like England, United States and Australia the trend and tendency is to whittle down the rigour of sovereign immunity and pave a smooth and sailing way for laying actions against the Government for torts suffered or injuries caused to the citizens at the behest of the governmental machinery by means otherwise than through procedure established by law.**

(VI) **The Hon'ble Supreme Court in the case of Pushpa Thakur v. Union, 1984 ACJ 559, has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned.**

(VII) **Motor Vehicles Act, 1988 is a special law to govern the payment of compensation to the victims of the road accident and it covers the vehicles owned by the Central Government used for defence purposes and no exception has been carved out in the law with respect to the torturous liability arising out of use of Government vehicle performing sovereign functions. Reference in this regard may be made to Section 2(20) (30)(37), 18, 60, 140(1), 144, 146(2) & (3), 165**

and 168 of the Motor Vehicles Act, 1988. Whether the State is bound by the provisions of the Motor Vehicles Act is no longer res integra.

(VIII) **It does not behove the State to seek cover under the plea of sovereign immunity merely to avoid liability for the consequences of the negligence of its servants. Such a plea is wholly out of place in a welfare State, in a case like the present where instead of providing for the needy, left so by the acts of its servants in the course of their employment, the attempt is to look for immunity founded upon the dubious privilege of the injured or the deceased, as the case may be, being run over by a vehicle engaged in the discharge of the sovereign functions of the State.**

(IX) **The law has marched ahead like a Pegasus but the Government attitude continues to be conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State.**

34. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the

administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court. Reference in this regard may be made to the following two judgments:-

(i) Baradakanta Mishra Ex-Commissioner of Endowments Vs. Bhimsen Dixit, (1973) 1 SCC 446:

In this case, the appellant, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held as under:-

> "The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much

wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law" (para 15)

(ii) State of Gujarat Vs. Secretary, Labour Social Welfare & Tribunal Development Deptt., 1982 CriLJ 2255:

The Gujarat High Court held the Secretary, Labour and Social Welfare and Tribal Development Department, to be guilty of contempt for refusing to follow the law laid down by the High Court. It was held as under:-

> "In Hasmukhlal C Shah v. State of Gujarat (1978) 19 Guj LR 378, a Division Bench of the High Court consisting of J.B. Mehta and P.D., Desai, JJ., after examining several decisions of the point observed:
>
> > "In a Government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise."
>
> 11. From these four decisions, the following propositions emerge.
>
> > (1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if

law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;

(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a willful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971."

35. In the recent judgment dated 30th October, 2009 in the case of **Urban Improvement Trust, Bikaner Vs. Mohan Lal, 2009 Scale (13) 671,** the Hon'ble Supreme Court showed a serious concern that frivolous and unjust litigation by the Government and statutory authorities are on increase. The Hon'ble Supreme Court observed as under:-

"4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act

in a callous and highhanded manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

5. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

5.1) In Dilbagh Rai Jarry v. Union of India [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

> "The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the

> case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

5.2) In Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.Rs. [(1979) 4 SCC 176] held:

> "2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose

of resisting such a claim has become unavailable...."

5.3) In a three Judge Bench judgment of Bhag Singh and Ors. v. Union Territory of Chandigarh through LAC, Chandigarh: [(1985) 3 SCC 737]:

> "3.... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

6. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will

> continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

36. Before passing any further order in this matter, this Court would like the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future.

37. Notice be issued to the learned Attorney General through Mr. Atul Nanda, Standing Counsel of Union of India to assist this Court

either personally or by giving necessary instructions.

38. List for the response to the notice on 4th December, 2009.

39. Copy of this order be given 'Dasti' to learned counsel for the parties as well as to the Standing Counsel of Union of India under signature of Court Master.

J.R. MIDHA, J

NOVEMBER 12, 2009
aj

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.176/2009

Date of Reserve : 7th December, 2009
Date of Decision: 9th December, 2009

%

YASHPAL LUTHRA & ANR. ..... Appellants
Through : Mr. M.K. Sinha and
Mr. N. Prabhakar, Advs.

versus

UNITED INDIA INSUR. CO.LTD. & ANR. .... Respondents
Through : Mr. L.K. Tyagi, Adv. for R-1.
Mr. D.K. Nag, Adv. with
Ms. Reshmi Rea Sinha, Adv.
for IRDA.
Mr. Pankaj Seth, Adv. for Royal
Sundaram Alliance Insurance
Co. Ltd. and Universal Sompo
General Insurance Co. Ltd.
Mr. Pradeep Gaur, Adv. for
National Insurance Co. Ltd.
Ms. Manjusha Wadhwa, Adv.
for Oriental Insurance Co. Ltd.
Ms. Suman Bagga, Adv. for
Choldamandalam.
Mr. Arun Mohan, Sr. Adv. as
amicus curiae.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest? YES

JUDGMENT

INTRODUCTORY

1. The Court time and resources can be usefully deployed, or they can be unnecessarily consumed or even simply wasted. In the latter case, delays result and there is, apart from injustice by reason thereof, popular dissatisfaction.

2. One of the issues that arose in this appeal gave an indication that the 'issue' was perhaps non-existent. Nevertheless, as an issue, it was consuming extensive Court time. It is in this backdrop that this Court decided to go deeper in an attempt to see if such waste of Court time and resources could be prevented.

3. The issue, and one that appears to be routinely raised by the Insurance Companies in motor accident claims, is:-

> **Whether under a comprehensive/package policy, the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car?**

4. The terms and conditions of the insurance policy explicitly covers death of or injury to the pillion rider. The relevant clause of the insurance policy is reproduced hereunder:-

> "1. Subject to the limits of liability as laid down in the Schedule thereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the insured vehicles against all sums which the insured shall become legally liable to pay in respect:-
>
> > **"(i) death of or bodily injury to any person including occupants carried in the vehicle** (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured." *(Emphasis added)*

5. The tariff as well as the terms and conditions of the Insurance Policy were regulated by Tariff Advisory Committee (hereinafter referred to as TAC) under the Insurance Act, 1938 till 31st December, 2006 and thereafter by Insurance Regulatory and Development Authority (hereinafter referred to as IRDA) under the Insurance Regulatory and Development Authority Act, 1999. TAC issued a circular dated 18th March, 1978 to all the Insurance companies to cover the occupants in a private car under comprehensive policy w.e.f. 25th March, 1977. On 2nd June, 1986, TAC directed all the Insurance companies to cover a pillion rider on a two-wheeler under the comprehensive policy. The aforesaid

directions of TAC are binding on all the Insurance companies who incorporated the specific clause (reproduced above) in all their insurance policies after the aforesaid directions.

6. Despite clear clause in the Insurance Policy (reproduced above) and binding directions of TAC and IRDA, the Insurance Company has denied the liability in respect of a pillion rider in this case. Same plea is raised by Insurance Companies in every case of pillion rider and occupants in a car under comprehensive/package policies and large number of such cases are reported to be pending in different Courts all over the country.

7. This Court sought to examine whether this really is an issue that calls for determination in every case; or, is it something which, keeping in view the TAC's directives and that of the IRDA, need not arise, and, more importantly, ought not to be raised by any Insurance Company? There can be no dispute about the larger principle that a non-existent issue cannot be allowed to consume Court time and resources.

8. To assist the Court in this endeavour, this Court, by order dated September 9, 2009 appointed Mr. Arun Mohan, Senior Advocate[1] as a*micus curiae*.

[1] Author of Book titled 'Justice, Courts and Delays'

THE FACTS IN THIS CASE

9. On 24th February, 2006, the deceased Vinod Luthra (24 years of age) was returning home riding on the pillion of motorcycle bearing No.DL-75AU-2074 being driven by his friend. At Ahuja Park traffic light near Lodhi Road Complex, the motorcycle was hit by an unknown vehicle, due to which the deceased fell down and suffered fatal injuries.

10. The parents and the widow of the deceased preferred a claim before the Motor Accident Claims Tribunal in which United India Insurance Company was the first Respondent and the owner of the motorcycle was the second Respondent. The motorcycle bearing No.DL7S-AU-2074 was insured with respondent No.1 vide package insurance policy, Ex.R1W1/A.

11.Respondent No.1 contested the claim petition before the learned Tribunal on the ground that respondent No.1 had not covered the risk of a pillion rider on the two-wheeler.

12. The learned Tribunal passed the award of Rs.4,53,300/- against Respondent No.2 (Umed Singh Mateyee) only, i.e., the learned Tribunal accepted the plea of Respondent No.1 and exonerated it from the liability.

13.The claimants preferred this first appeal where they urged that the insurance company was also liable. The claimants also sought enhancement of the award amount. In appeal, the question that arose was: Whether the pillion rider on a two-wheeler (and likewise occupants in a private car) would be covered by a package / comprehensive policy?

EXAMINING THE FACTUAL BACKDROP

14. Being more a question of fact based on the directives of TAC and that of IRDA, this Court deemed it necessary to examine the competent officer of Respondent No.1 under Section 165 of the Indian Evidence Act.

15. Vide order dated 4th September, 2009, the Manager (Legal) of respondent No.1 was directed to appear before this Court for examination under Section 165 of the Indian Evidence Act, in pursuance to which the Mr. B.S. Balyan, Manager of United India Insurance Co. Ltd. appeared before this Court on 9th September, 2009 and admitted the aforesaid clause in the insurance policy, but denied the liability. The Manager of the respondent No.1 was however not aware of the Circulars and the instructions issued by the TAC and IRDA. The General Manager of

respondent No.1 was, therefore, directed to appear before this Court to explain the factual position.

16. Till 31st December, 2006, TAC and w.e.f. 1st January, 2007, IRDA are the statutory regulatory authorities and they fix the tariff as well as the terms and conditions of the policies by all insurance companies. Notice was, therefore, issued to TAC and IRDA to explain the factual position with respect to liability of the insurance companies with respect to a pillion rider on a two-wheeler and the occupants in a private car under the comprehensive / package policy.

17. On 26th October, 2009, the Deputy Manager of TAC was examined under Section 165 of the Indian Evidence Act and he deposed that all the Insurance Companies are liable to pay compensation in respect of occupants in a private car w.e.f. 25th March, 1977 and in respect of a pillion rider on a two-wheeler w.e.f. 2nd June, 1986 under the comprehensive/ package policy. The relevant statement of the Deputy Manager of IRDA (Mr. K.O. Antony) is reproduced hereunder:-

> "The Insurance Company is not liable in respect of the pillion rider on a scooter and occupant in a car in respect of an 'Act Only' policy which only covers the risks towards the Third Party'.
>
> In respect of Comprehensive Policy, the TAC issued a circular dated 18th March, 1978 instructing all the

> Insurance Companies to cover the liability towards the occupant in a car w.e.f. 25th March, 1977. There is no change in position since then and the Insurance Companies are liable in respect of liability towards the occupant of a private car under the Comprehensive Policy, which is now called a Package Policy.
>
> On 2nd June, 1986, the TAC issued instructions to all the Insurance Companies to cover the pillion rider on a scooter/motorcycle under the Comprehensive Policy. This position continues to be till date. The Comprehensive Policy is now called a Package Policy.
>
> The instructions/circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective till date and all the Insurance Companies are bound to pay compensation in respect of the liability towards a pillion rider on a scooter and occupant in a car under the Comprehensive Policy / Package Policy irrespective of the terms and conditions contained in the policy."

18. The Officer on Special Duty of IRDA (Mr. Anantha Krishnan) also appeared before this Court on 26th October 2009 and he deposed that all Insurance Companies are liable in respect of occupants in a private car w.e.f. 25th March, 1977 and in respect of a pillion rider on a scooter w.e.f. 2nd June, 1986 under the comprehensive / package policy. The relevant portion of his statement is reproduced hereunder:-

> "All the Insurance Companies are liable in respect of occupant in a private car w.e.f. 25th March, 1977; and in respect of a pillion rider on a scooter w.e.f. 2nd June, 1986, under a Comprehensive Policy, now called as Package Policy.
>
> The circulars dated 18th March, 1978 and 2nd June 1986 were issued by TAC. The control and regulation of Tariff class of insurance business was taken over by

> Insurance Regulatory Development Authority (IRDA) w.e.f. 1st January, 2007 and IRDA has specifically reiterated the said instructions in their guidelines. The circulars dated 18th March, 1978 and 2nd June, 1986 of the TAC, contents of which were incorporated in the 'India Motor Tariff effective from 1st July, 2002 continue to be operative and binding on the Insurance Companies."

19. The General Manager of respondent No.1 (Mr. M.A. Kharat) was also examined by this Court under Section 165 of the Indian Evidence Act on 5th November, 2009 and he admitted that respondent No.1 is liable in respect of occupants in a private car and a pillion rider on a two wheeler under the comprehensive / package policy. The relevant portion of the statement of Mr. M.A. Kharat, General Manager of respondent No.1 is reproduced hereunder:-

> "I admit that United India Insurance Company Limited is liable in respect of the occupants in a private car and pillion rider on a two wheeler under Package/Comprehensive Policy.
>
> Question : In how many cases you have raised this plea, in how many cases you have succeeded in avoiding the liability on the basis of this plea and how many appeals have been filed on this ground?
>
> Answer: We are compiling the said data and we shall submit that same before this Court within four weeks.
>
> Question : What action has been taken by you in these cases?
>
> Answer: It came to the notice of the Head Office that such plea has been raised by some offices whereupon the Head Office issued instructions dated 6th October, 2008 to Cochi Office of our Company to immediately withdraw the appeals filed on this ground. However, I am not aware whether such appeals have been

withdrawn. I will check-up the same and intimate to this Court on the next date of hearing.

I admit that United India Insurance Company Limited is liable in the present case and I withdraw the submissions made before the learned Tribunal as well as before this Court on this ground. The entire award amount along with interest shall be deposited as per the directions of this Court within a period of 30 days.

I shall compile the details of all appeals filed before different Courts on this ground within a period of two weeks and all the appeals on this ground shall be withdrawn by the company within a period of two weeks thereafter and the compliance report shall be filed before this Court. Wherever the appeal is filed on various grounds including this ground, the company shall withdraw the appeals filed on this particular ground and shall contest the appeals filed on other grounds, if available.

The United India Insurance Company Limited has raised this plea before the Hon'ble Supreme Court in the case bearing appeal No.3335/2009. The company shall inform the advocate on record to place on record these instructions and to inform the Court that it is the policy of the company to bear the liability in respect of occupants in a private car and pillion rider on a two-wheeler under Package/Comprehensive Policy.

I admit that Mr. B.S. Balyan, Manager, United India Insurance Company Limited has made erroneous statement before this Court on 9th September, 2009 and 26th October, 2009."

20. On 16th November, 2009, IRDA issued a Circular to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. The relevant portion of the said circular is reproduced hereunder:-

"IRDA

Ref: IRDA/NL/CIR/F&U/073/11/2009 November 16, 2009

To

CEOs of all General Insurance Companies

Re: Liability of Insurance Companies in respect of Occupants of a Private Car and Pillion rider on a Two-Wheeler under Standard Motor Package Policy [also called Comprehensive Policy].

Insurers' attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:-

"SECTION II - Liability to Third Parties

1. Subject to the limits of liabilities as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured."

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:-

(i) Circular M.V. No.l of 1978 - dated 18th March, 1978 [regarding occupants carried in Private Car] effective from 25th March, 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 [regarding Pillion Riders in a Two-Wheeler] effective from the date of the circular.

The above circulars make it clear that the Insured's liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No.066/IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular no.019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of

standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All General Insurers are advised to adhere to the afore-mentioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approve of Competent Authority.

Sd/- (Prabodh Chander)

Executive Director"

THE CONSENSUS AT THE MEETING OF THE INSURERS

21. On 26th November, 2009, a meeting of CEOs of all the Insurance Companies was convened under the auspices of the IRDA. The *amicus curiae* was appointed as Observer for the meeting. This meeting was attended by the CEO's of all the seventeen Insurance Companies, namely, Bajaj Allianz General Insurance Co., ICICI Lombard General Insurance Co. Ltd., IFFCO Tokyo Insurance Co. Ltd., Reliance General Insurance Co. Ltd., Royal Sundram Allianc Insurance Co. Ltd., TATA AIG General Insurance Co. Ltd., Cholamandalam General Insurance Co. Ltd., HDFC ERGO General Insurance Co. Ltd., Future Generally India Insurance Co. Ltd., Universal Sompo General Insurance Co. Ltd., Shriram General Insurance Co. Ltd., Bharti Axa General Insurance Co. Ltd., Raheja QBE General Insurance Co. Ltd., National Insurance Co. Ltd., New India Assurance Co. Ltd., Oriental

Insurance Co. Ltd., United India Insurance Co. Ltd. After deliberations, all the Insurance Companies admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies agreed to comply with the Circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies within two weeks and the withdrawal to be done within four weeks thereafter.

22.The relevant portion of the Minutes of the Meeting convened by IRDA on 26th November, 2009 is reproduced hereunder:-

> "5. The insurers companies have sought the advice of the learned amicus, Shri Arun Mohan in the matter. The learned

amicus explained that it would be prudent on the part of the Companies to take the advice of their counsel. However he stated that the companies may express their views freely and he will record them as stated by them.

Thereafter the learned amicus noted the stand taken by the Companies on various issues as under.

(i) All the Insurance Companies agreed to comply with the circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the Insurance Companies in respect of occupants in a private car and pillion rider on a two wheeler under the comprehensive / package policies. Insurers, however, maintained that they will take up the issues of pricing with the Regulatory Authority for future.

(ii) With respect to the pending cases before the MACT, all the Insurance Companies have agreed to withdraw the aforesaid plea wherever taken and to issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(iii) With respect to the appeals pending before the High Courts, all the insurance companies have agreed to issue instructions within 7 days to their respective operating officers as well as to counsels to withdraw the contest on this ground [that of pillion rider in two-wheeler or occupant in a private car].

(iv) The number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue will be identified by the companies within a period of 2 weeks and the contest on this ground shall be withdrawn within a period of four weeks thereafter.

(v) With respect to the appeals pending before the Hon'ble Supreme Court, all the insurance companies have

agreed to inform, within a period of 7 days, their respective Advocates on record about the IRDA Circulars for appropriate advice and action.

The companies have submitted that in view of the difficulty in collecting data on the number of claims pending on the issue before the MACTs, they may be given time. The learned amicus explained that collection of such data is required by the Honorable Court and efforts must made and if there are difficulties the court may be apprised of the position. The Government companies expressed lot of difficulty in finding out the statistics on this ground because they have to work out the statistics on the basis of the information extracted from each of the file and contacting each of the advocate and also by examining the defences the advocate might have taken before the courts. However, all the insurers were unanimous that they shall abide by the orders of the High Court by not contesting the cases before MACT/High Courts on this ground at all. The learned amicus curiae advised the insurers to take immediate steps and collect the statistics at a central point for further necessary communication to the Hon'ble High Court."

23. On 3rd December, 2009, IRDA issued a Circular to all the Insurance Companies, which is reproduced hereunder:-

"IRDA

IRDA/NL/CIR/F&U/078/12/2009 **3rd Dec. 2009.**

To

All CEOs of All General Insurance Companies
(except ECGC, AIC, Staff Health, Apollo)

Re: Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Rider in a two-wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Pursuant to the Order of the Delhi High Court dated 23.11.2009 in MAC APP No. 176/209 in the case of Yashpal Luthra Vs. United India & Others, the Authority convened a meeting on November 26, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curie.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the court on the same day i.e. November 26, 2009 and the court was pleased to pass the order (dt. 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dt. 26.11.2009 of the High Court. Such compliance on your part would also involve.

(i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(ii) with respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the counsels to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks

and the contest on this ground being withdrawn within a period of four weeks thereafter.

(iii) With respect to the appeals pending before the Hon'ble Supreme Court, informing, within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.

Your attention is also drawn to the discussions in the CEOs meeting on 26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

The IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/- (Prabodh Chander)

Executive Director"

24. National Insurance Co. Ltd., Oriental Insurance Co. Ltd., TATA AIG General Insurance Co. Ltd., IFFCO Tokio General Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd. and Raheja QBE General Insurance Co. Ltd. have admitted their liability in respect of a pillion rider on a two-wheeler and occupants in a private car under comprehensive/package policy before this Court.

25. Oriental Insurance Co. Ltd. has also issued circular dated 25th November, 2009 to all their officers advising them as under:-

> "We have received Circular NO.IRDA/NL/CIR/F&U/073/11/2009 dt. 16.11.2009 from IRDA whereby it is confirmed that insured's liability in respect of occupant carried in a Private Car and Pillion Rider carried on 2-wheeler is covered under the Standard Motor Package Policy. IRDA has further confirmed that vide various Circulars issued after detariff of Motor, there has been no change in the scope of the standard covers. A copy of the Circular is enclosed for record & ready reference.
>
> The terms of the cover as per the Motor Package Policy for Private Cars and 2-wheeler as given in the Policy wording Section 2.1(i) are very clear and are reconfirmed by the IRDA Circular.
>
> It is, therefore, advised to immediately review all cases where appeal has been filed on the ground that Insurer is not liable for occupants of Private Cars and Pillion Rider in a 2-wheeler under the Motor Package Policy. If the appeal is based solely on these grounds then it must be immediately withdrawn. If there are other grounds for filing appeal then the case must be examined on merits and decision regarding continuation of appeal be taken by the Regional Manager concerned.
>
> Lastly, it must be ensured that our offices desist from filing appeals on the grounds of Pillion Rider or occupants of Private Car not being covered under Motor Package Policies."

26. National Insurance Co. Ltd. has also issued a circular dated 27th November, 2009 to all their Regional In-charges and Regional Offices advising them as under:-

> "We forward herewith the captioned circular of the IRDA dated 16/11/2009.

In the Meeting of CEOs/GMs convened by IRDA on 26/11/2009 at New Delhi, it has unanimously been decided by the PSU Companies for the time being, no fresh SLPs will be filed in the Supreme Court on the above ground and all currently pending SLPs will be dealt with as per the advice of our Counsels on a case to case basis. Further advices in this regard will be intimated in due course.

Meanwhile, you are advised to take the following steps in the matter immediately.

1. Initiate immediate action, at any rate before 7/12/09, for withdrawal of all Appeal cases filed by you in High Courts **SOLELY ON THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND PILLION RIDER OF TWO-WHEELERS (NOT CARRIED FOR HIRE OR REWARD) COVERED UNDER PACKAGE POLICIES.**
2. If such Appeals have been filed on concurrent grounds of Quantum, Negligence etc as well along with the above ground, **FILE APPLICATIONS BEFORE HIGH COURTS TO THE EFFECT THAT THE COMPANY IS NOT PRESSING THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND PILLION RIDERS OF TWO-WHEELERS UNDER PACKAGE POLICIES AND THEREAFTER CONTINUE TO MAINTAIN THE SAID APPEALS ON THE REMAINING GROUNDS.**
3. Segregate all MACT cases where such a pleading has been taken in our written statements, **AND FILE APPLICATIONS BEFORE THE RESPECTIVE COURTS TO THE EFFECT THAT THE COMPANY NO LONGER WISHES TO PRESS THE SAID PLEADING AND**

CONTINUE TO DEFEND THE CASES ON OTHER GROUNDS.

4. Update the data of all such cases filed Solely on the above ground before High Courts and furnish the same to HO TP department in the format already sent to your **ALONG WITH THE FINANCIAL IMPACT OF SUCH WITHDRAWAL**.

5. Your are also advised to **SUBMIT DETAILS OF THE INSTANCES FALLING UNDER ITEM NO.3 ABOVE IN A SPECIFIC 'FORMAT' BEING SENT TO YOU SEPARATELY.**

6. Since the Company is required to furnish the accurate Data regarding the above to IRDA and to Delhi High Court by 7/12/09, you are advised to take immediate action in compliance."

THE POSITION AS IT EMERGES

27.In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive / package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the

IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

28.Be that as it may, by issuance of fresh circulars dated 16th November, 2009 and 3rd December, 2009 by IRDA reiterating the position and the action taken by Insurance Companies pursuant thereto, the pending and future claims will no longer consume the Court time for deciding this issue. To that extent, the Court time will be saved and the resultant justice to the claimants on this account shall not be delayed or denied.

29.All Motor Accident Claims Tribunals functioning in the National Capital Territory of Delhi will take note and ensure that no such plea is allowed to be put forward by any Insurance Company.

30.It is also hoped that large number of pending cases all over the country shall come to an end, and the claimants who have been denied compensation on this ground, shall ultimately get the compensation legitimately due to them.

31.This matter will remain on board for the limited purpose of receiving the details from the insurance companies and passing, if need be, any orders thereon.

32.As far as claim of Yash Pal Luthra and another is concerned, separate order shall be passed.

33. This Court appreciates the able and effective assistance by Shri Arun Mohan, Senior Advocate as *amicus curiae*. This Court also appreciates the belated efforts of IRDA to regulate the Insurance Companies and to enforce the terms of the comprehensive/package Insurance policy and the circulars dated 18th March, 1978 and 2nd June, 1986.

34. Copy of this judgment be given 'Dasti' to learned counsel for the parties, the learned amicus curiae and nominated counsels for all Insurance Companies under signature of the Court Master.

35. Copy of this judgment be also sent to all Motor Accident Claims Tribunals in NCT of Delhi.

J.R. MIDHA, J.

DECEMBER 09, 2009
s.pal

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 432/2009

BAJAJ ALLIANZ GENERAL
INSURANCE CO. LTD. ..... Appellant
Through : Mr. Atul Nanda, Adv.

versus

KAMLA BIST & ORS. ..... Respondents
Through : Mr. Arun Mohan, amicus curiae.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 04.11.2009

CM Nos.12670-71/2009

1. Allowed, subject to just exceptions.

2. CMs stand disposed of.

MAC.APP.No.432/2009, CM No.12672/2009 and CM No.12669/2009

1. Issue notice to the respondents as well as learned counsel for the respondents who appeared before the learned Tribunal by ordinary process, registered A.D. post as well as be given 'Dasti', returnable on 7th December, 2009.

2. The LCR be requisitioned before the next date of hearing.

3. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.7,30,680/- has been awarded to claimants/respondents No.1 to 5.

4. The accident dated 27th May, 2002 resulted in grievous injuries to Hikmat Singh who filed the claim petition before the learned Tribunal. Hikmat Singh expired on 29th August, 2006 during the pendency of the claim petition whereupon his legal representatives, namely, respondents No.1 to 5 were substituted in his place and they continued the claim petition.

5. The learned counsel for the appellant submits that the claim petition abated on 29th August, 2006 upon the death of Hikmat Singh and the right to sue did not survive in favour of claimants/respondents No.1 to 5.

6. Mr. Arun Mohan, Senior Advocate was appointed as amicus curiae to assist this Court vide order dated 9th September, 2009. The learned amicus curiae refers to 178th Report of the Law Commission in which the Law Commission has recommended the

amendment to Section 306 of the Indian Succession Act, 1925 as well as Section 166 of the Motor Vehicles Act, 1988 to provide for initiation/continuation of proceedings by the legal representatives of the injured MAC.APP. 432/2009

person upon his death. The Law Commission has referred to Full Bench judgment of Karnataka High Court in the case of **Kannamma Vs. Dy. General Manager ILR 1990 Karn. 4300 (FB)** in which the Full Bench recommended that the provisions of Section 306 of the Indian Succession Act, 1925 and of Section 110A of the Motor Vehicles Act, 1939 be amended so as to permit the survival of the right of the injured person to seek compensation to his legal representatives, irrespective of whether the cause of death was relatable to the accident or not.

In the subsequent, Single Bench judgment of Karnataka High Court in the case of **Baburao Sataba Manabutaker vs. Doreswamy (MFA 4072/1998 dated 4.9.2001)** lamented delay in amending the law and pointed out that the delay in amendment is causing grave injustice.

7. The Law Commission made the following recommendations:-

"We shall, therefore, deal with these amendments seriatum:

(A) Section 306 of the Indian Succession Act, 1925 and illustration (i) below the section:-

Section 306 of the Indian Succession Act, 1925 states

that among certain other rights, the right of the injured person to seek damages is personal to him and will not survive to his legal representatives. This position so far as accident compensation is concerned, is no longer acceptable in today's social jurisprudence. In fact, such a provision has been given up in England as far back as in 1934. Indian courts have also felt that this provision in Section 306 which does not conform to today's standards of justice and has to be deleted. We are also of the view that this provision is too anachronistic to be allowed to continue in the statute book.

Section 306 as it now stands reads as follows; in so far as it is relevant for the present purpose:

> "Section 306: All demands whatsoever and all rights to prosecute ..... any action or special proceeding existing in favour of ..... a person at the time of his

> decease, survive to …… his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code or other personal injuries not causing the death of the party."

There is an illustration below Section 306 and it reads as follows:

> "Illustrations (i): A collision takes place on a railway in consequence of some neglect or default of an official, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive."

We are of the view that the underlined words in Section 306, namely,

(a) "assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party" shall be omitted.

(b) illustration (i) shall be omitted.

(B) Section 166 of the Motor Vehicles Act, 1988: Amendment to provide for initiation/continuation of a proceeding under the Act by the legal representatives of an injured person upon

his death even if the death has no relation or nexus with the accident:

The existing provisions of Section 166 of the Motor Vehicles Act, 1988 are as follows in so far as they are relevant:

> "Section 166: An application for compensation arising out of an accident of the nature specified in sub section (1) of Section 165 may be made-
>
> (a) by the person who has sustained the injury; or
> (b) by the owner of the property; or
> (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
> (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be:

> Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

Sub section (2) and (3) of Section 166 deal with the form, the time limit for filing the application and sub section (4) requires the police officer to file a copy of the report before the Claim's

Tribunal. The Tribunal may, if it thinks necessary so to do, treat the report as if it were an application for compensation under the Act.

In the light of what we have said earlier, we propose insertion of a new sub section (5) in Section 166 as follows:

> "(5) Notwithstanding anything in this Act or any law for the time being in force, the right of a person to claim compensation for injury in an accident shall upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable or had any nexus with the injury, or not.
>
> Provided that in cases where the cause of death is not relatable or has no nexus with the injury, the compensation shall be restricted to the period between the date of injury and the date of death of the person injured."

(C) Section 110A of the Motor Vehicles Act, 1939 (as applied to pending proceedings in Tribunal or Courts: Transitory provision to be made to provide for initiation/continuation of a proceeding under the Act by the legal representative of the injured person upon his death, even if the death has no

relation or nexus with the accident:

The Motor vehicles Act, 1939 has been repealed by the Motor Vehicles Act, 1988 but it is possible that several proceedings initiated under that Act may still be pending either before the Motor Accident Claims Tribunal or at the appellate stage. Such proceedings are obviously saved under Section 217(2) of the Motor Vehicles Act, 1988.

By way of abundant caution and with a view to cover such pending cases we recommend the following provision to be made.

> "Section 217A – Certain pending proceedings relating to compensation under the Motor Vehicles Act, 1939 not to abate:
>
> "Notwithstanding anything contained in the Motor Vehicles Act, 1939 or any law for the time being in force, in respect of claims for compensation under the said Motor Vehicles Act, 1939 which are pending at any stage, at the date of commencement of this Act in any Tribunal or

> Court, the right of an injured person to claim compensation shall upon the death of the injured person survive to his legal representatives, irrespective of whether the cause of death was relatable or had any nexus with the injury or not,

> Provided that in cases where the cause of death is not relatable or has no nexus with the injury, the compensation shall be restricted for the period between the date of injury and the date of death of the person injured."

8. The Government is still to act on the recommendation of 178th Report of Law Commission and the position continues as it is which is causing grave injustice to the victims of the road accident.

9. Since the Government has now appointed a Committee to review the entire Motor Vehicles Act, the copy of this order be sent to the Secretary, Ministry of Road Transport and Highways. The copy of this order be also sent to Mr. S. Sunder, Chairman of the Expert Committee appointed by Ministry of Road Transport and Highways to consider the recommendations of the Law Commission.

10. Subject to the deposit of Rs.1,00,000/- by the appellant with the Registrar General of this Court within 30 days, the execution of the impugned award shall remain stayed.

11. Upon the aforesaid deposit being made, the Registrar

General is directed to keep the said amount as well as the statutory amount of Rs.25,000/- in fixed deposit initially for a period of six months to be renewed till further order.

12. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

NOVEMBER 04, 2009
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP. 158/2007

Date of Decision: 21st May, 2009

%

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through : Mr. D.K. Sharma, Adv.

versus

CO. SURINDER PAL & ANR ..... Respondents
Through : Mr. V.P. Chaudhary, Sr. Adv.
with Mr. Nitinjya Chaudhary,
Adv. for R – 1.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

JUDGMENT (Oral)

MAC APP.No.158/2007 & CM No.3611/2007

1. The appellant has sought the condonation of delay of 184 days in filing of this appeal. The reasons for condonation of delay have been given in para Nos. 2 to 5 of the application, which are reproduced hereunder:-

> "(2) That after passing of the award dated 3.6.2006, the defending Advocate of the appellant namely Sh. Rajesh Kumar for the reasons best known to him, submitted the certified copy of the award to the appellant only on 8.9.2006.

(3) That thereafter, the insurance company/appellant sought legal opinion on the award and it was opined that the impugned award deserves to be challenged on quantum.

(3) That accordingly, the file was sent to the Regional Office for approval of filing the award.

(4) That unfortunately, the office file was kept somewhere in other records in the offices of the Company and remained untraced for a long period and despite due diligence and search, could not be searched before 25th January, 2007 and thereafter, the said file was handed over to the counsel for preparation of appeal.

(5) That the delay of 184 days as aforesaid is bonafide and unintentional and it took time for obtaining legal opinion and approval also"

2. Learned counsel for the claimant/respondent No.1 has strongly opposed the said application on the following grounds:-

(i) The impugned award was passed on 3rd June, 2006 and the certified copy was applied by the appellant's counsel on 22nd August, 2006 which was ready on 23rd August, 2006. The period of limitation for filing the appeal expired on 3rd September, 2006. However, the appeal was filed on 5th March, 2007 and there is delay of 184 days in filing of the appeal.

(ii) No explanation has been given in the application about the delay on the part of the counsel to apply for the

certified copy on 22nd August, 2006 and delay in handing over the certified copy to the appellant on 8th September, 2006. No affidavit of the counsel has been placed on record to explain the said delay.

(iii) With respect to the averments made in para 4 of the application that the file of this case was kept in other records in the offices of the Company, it is not stated in which office the file was kept, nor it is stated as to from which office, it was recovered. No affidavit of the concerned Officer has been filed to indicate where the file was kept and where it was ultimately traced and that it was so traced on 25th January, 2007.

3. The learned counsel for the claimant/respondent has referred to and relied upon the following two judgments:-

(i) General Manager Northern Railway V. Vishva Nath Nangia, 118 (2005) Delhi Law Times 286(DB) -

"3. It has not been averred as to when the matter was sent to the Railway Advocate and when the opinion of the Railway Advocate was obtained; when the Railway Panel changed; when the new Advocate was appointed; when the application for certified copies was filed. In our opinion the decision to file the writ petition has not been taken with due diligence by the officers concerned so as to condone the delay in the facts and circumstances of this case. The condonation of delay is not a matter of right. The delay has to be properly explained and from the averments made in this application, we do not find

any semblance of explanation tendered by the petitioner."

(ii) Commissioner of Central Excise, Chennai-II V. Customs, Excise & Gold (Control) 120 (2005) Delhi Law Times 549 DB -

"4. The case pleaded by the Applicant in the application for condonation of delay in filing the appeal it is stated that the Appellate Tribunal had passed the order on 6.3.2002, copy of which was received by the Appellant on 11.4.2002 and the Appellant had filed a reference on 25.10.2002. According to the Applicant, there is 14 days of delay in fling the present appeal being CEAC No. 19/2005. Thus, it is prayed that the delay be condoned. We find that the averments in the application are vague and do not correctly state the facts which appear from the record before us. We may also notice here that during hearing of the case we had even called report on the case from the Registry of the Court which again shows that the facts have not been correctly mentioned in the application.

5. From the copy of the order of the Appellate Tribunal placed on record before us it is clear that the order was passed on 6.3.2002 copy thereof was ready on 26.3.2002 and there is no document on record to show that as to how the Appellant has received the copy on 11.4.2002. Even if, it is presumed in favour of the Appellant that copy was received on 11.4.2002, then they had allegedly filed the Reference in the Registry of this Court on 25.10.2002 apparently, beyond the period of limitation..... The Appellant has hardly given any satisfactory explanation for this inordinate delay. There is not even an iota of averment as to why the so-called reference application which itself was not maintainable in law, was never refiled even till date. This only shows complete callous and irresponsible attitude on the part of the Respondents in dealing with the legal matters. Wherever the Statute provides a limitation it

must be construed and applied strictly as a definite right accrues to the other party on expiry of such period before the other party can be divested of such benefit there should be definite and proper explanation on record before the Court to condone the delay in filing an appeal. Condonation of delay cannot be claimed as a matter of right and such discretion should not be exercised by the Court or the authorities in a mechanical manner. Legislative intent behind prescribing the period of limitation normally is to create a bar in institution of the proceedings upon expiry of the period except for the exceptions specifically provided in that provision itself. Delay cannot be condoned as a matter of right or on the mere asking of the party. It is expected of the Court to exercise such discretion as per settled guidelines and is inevitable for a party to show a sufficient cause while requisiting the Court to exercise such discretion in favour of the Applicant, In the case of Shanti Devi v. State of Haryana and Ors., 1999 (5) SCC 703, the Supreme Court held that delay should be explained properly and sufficient cause should be shown before the Court can condone the delay.

6. We have already noticed that in the application for condonation of delay the Applicant has failed to give any plausible reasons. Similar is the position in regard to application for condonation of delay in refiling the appeal. The said application, in fact, is misconceived. The reference application was never refiled by the Applicant while the appeal in hand was filed in the Registry of this Court for the first time on 1.10.2005. Thus, this application would hardly be even maintainable. The only reason stated in the application for condonation of delay is that there was communication gap between the Counsel and the Department as a result of which necessary steps could not be taken by the Department within the period of limitation. May be the Respondents are not strictly required to explain each day of delay but they are duty bound to at least render some plausible explanation for the substantial period for which condonation is prayed. In both these applications

there is no averment as to what happened after 25.10.2002 till 1.3.2005.

7. We cannot help but to observe that conduct of the Department is not satisfactory in the present case and it also does not meet the minimum standard of administrative function in the Government department particularly when it relates to recovery of revenue. There is no cause shown much less a sufficient cause for condoning the delay. The application is vague and no satisfactory explanation has been rendered in the application which could persuade the Court to condone such a long delay in filing the appeal.

8. We dismiss these applications and consequently, the appeal does not survive for consideration being hopelessly barred by time."

4. The averments made by the appellant in the application for condonation of delay do not constitute sufficient cause for condonation of delay. The appellant has made vague averments in the application. In para 2 of the application, no explanation has been given for the period 3rd June 2006 to 8th September, 2006. It is stated that the defending advocate of the appellant handed over the certified copy of the award to the appellant on 8th September, 2006 for the reasons best known to him meaning thereby that the appellant is not even aware of the said reasons. This shows sheer negligence on the part of the counsel for the appellant and further shows that the appellant did not even make any effort to ascertain the reasons from the lawyer. No affidavit

has been filed to explain the delay for the said period. Even after 8th September, 2006, the appellant took more than six months to file the appeal and there is no sufficient explanation for the said period also. No case of condonation of delay is made out from the application filed by the appellant.

5. Notwithstanding the bar of limitation, the case has been examined on merits. This case relates to the death of Punit Kumar Pal, aged 33 years in a road accident on 13th June, 2002. The deceased was survived by his parents who filed claim petition before the learned Tribunal.

6. The deceased was MBA(Finance) and was working as Manager(Finance) with M/s Lyka Labs Limited since January, 2001. He was earning Rs.31,250 per month as per the salary certificate - EX-PW1/16.

7. The witness from M/s Lyka Labs Limited appeared as PW2 and proved the income and future prospects of the deceased. PW2 deposed in the witness box that if the deceased would have survived the accident, he would have become Senior Manager (Finance), GM (Finance) and thereafter Vice President (Finance) and his income would have been Rs.35,000/- per month plus other perks.

8. Despite clear evidence of income of Rs.31,250 per month and also the evidence of future prospects, the learned Tribunal took the annual income of the deceased as Rs.2,24,898/- (Rs.18,741.50 per month) on the basis of TDS certificate - EX-PW1/15. The learned Tribunal did not take the future prospects into consideration and after deducting 1/3rd towards personal expenses, took the loss of dependency of the claimants to be Rs.1,49,932/- rounded of as Rs.1,50,000/-.

9. The deceased had a permanent job. However, the learned Tribunal made an observation that it is not found whether the job was permanent, contractual or temporary. The observation of the learned Tribunal is out of context and contrary to the evidence on record.

10. The finding of the learned Tribunal that the father of the deceased was not dependent upon him because he was getting pension is contrary to the evidence on record. The father of the deceased appeared in witness box as PW1 and deposed that both the parents were fully dependent upon their son, who was contributing Rs.50,000/- per quarter (Rs.16,667/- per month) to the family. However, the learned Tribunal observed that since the father of the deceased was drawing pension, the compensation of Rs.7,50,000/-(Rs.1,50,000/- per annum) was awarded towards

loss of love and affection and non-economic dependency. There is no law that the father drawing pension cannot be dependent upon his son.

11. This case is squarely covered by Section 167 of the Indian Evidence Act which is reproduced hereunder:-

> "**Section 167 – No new trial for improper admission or rejection of evidence –**
>
> The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision."

12. Improper admission or rejection of evidence is not by itself a ground for reversal of a decision, if there is other evidence to support it. Where admissible evidence has been improperly rejected or inadmissible evidence has been admitted by the Judge, such improper reception or rejection of evidence shall not of itself be a ground for new trial or reversal of any decision in any case, unless substantial wrong or miscarriage of justice has been thereby occasioned; or, in other words, if the Court considers that after leaving aside the evidence that has been improperly admitted, there was enough evidence on the record to justify the decision of the lower court, or that if the rejected

evidence were admitted the decision ought not have been affected thereby, no Court of appeal should set it aside.

13. An objection to the proper admission of evidence is material only if it can be shown that the exclusion of evidence improperly admitted is fatal to the decision. A finding will not, therefore, be disturbed if, throwing aside the evidence which ought not to have been admitted, there, still remains sufficient evidence to support the finding. Under Section 167 of the Evidence Act, the improper admission of evidence is not in itself ground for a new trial or reversal of decision, if independently of the evidence of improperly admitted there is sufficient evidence to justify the decision.

14. In **Owners & Parties vs. Fernandeo Lopez, AIR 1989 SC 2206,** the Hon'ble Supreme Court held as under:-

> "Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure

adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system." (Para 18)

15. In **Emperor vs Ermanali & Ors., AIR 1930 Calcutta 212,** Full Bench of Calcutta High Court held as under:-

"Rules and Regulations are intended to be the handmaid and not the mistress of the law, and that in criminal proceedings it is of the utmost importance that a decision just, and reasonable on the merits should not be disturbed because in the course of the proceedings some flaw can be detected that is not fundamental and which is not proved to have worked injustice to the accused, although it may constitute a breach of the rules of criminal procedure." (Para 33)

16. In **John vs Sherthali Muncipality, AIR 1959 Kerala 323,** the Kerala High Court held as under:-

"It is therefore clear that the learned Magistrate committed a grave error in examining the accused person without his request and against his protest, to prove a fact which the prosecution should have established by other evidence. That, however, is in my opinion, no ground to quash the entire proceedings, Section 167, Indian Evidence Act, 1872 provides inter alia that improper admission of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall

> appear to the Court before which such objection is raised that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision. The question whether the prosecution was sustainable or the conviction was rightly made has therefore to be examined eschewing altogether the evidence furnished by the accused while under examination as a court witness."

17. The learned Tribunal improperly rejected the clear evidence of dependency of the parents of the deceased upon their son, who was contributing Rs.50,000/- per quarter (Rs.16,667/- per month) to his parents. The father getting pension does not mean that the parents were not dependent on their son.

18. The learned Tribunal improperly omitted the evidence of future prospects of the deceased. The salary of the deceased was proved by Ex.PW1/16 to be Rs.31,250/-. The TDS certificate - Ex.PW1/15 shows that Rs.16,951/- was deducted during the relevant year towards the tax out of the taxable portion of the income. The income of the deceased for the purpose of computation of compensation has to be taken as gross salary less conveyance less Income Tax which comes to Rs.24,837/- per month. [Rs.31,250/- minus Rs.5,000/- (as conveyance) multiplied by 12 minus TDS of Rs.16,951/-]. 50% of the income of the deceased has to be added towards future prospects and the

income of the deceased for computation of compensation comes to Rs.37,255.51 (Rs.24,837 + 50% of Rs.24,837/-). 50% has to be deducted towards personal expenses of the deceased and the loss of dependency of the parents comes to Rs.18,627.75 per month. By applying multiplier of five according to the age of the parents, the loss of dependency comes to Rs.11,17,665/-.

19. The amount awarded by the learned Tribunal is on a lower side. However, since there is no cross appeal by the appellants, this issue does not need further consideration. In the facts and circumstances of this case and considering the clear evidence of the income of Rs.24,837/- per month and future prospects of Rs.12,418.50 (50% of the aforesaid income), which were improperly omitted by the learned Tribunal and also clear evidence of the parents being dependent upon the son, which has been improperly rejected by the learned Tribunal, it is held that the parents of the deceased are entitled to at least Rs.7,65,000/- awarded by the learned Tribunal towards loss of dependency. Applying Section 167 of the Evidence Act, the award of the learned Tribunal is upheld though not for the reasons mentioned therein but for the reasons stated above as there is sufficient evidence on record to justify the amount of

compensation awarded by the learned Tribunal as loss of dependency. As such, no case is made out in the appeal even on merits.

20. For all the aforesaid reasons, the appeal as well as the application for condonation of delay are dismissed.

21. Copy of this order be given 'Dasti' to learned counsel for the parties under signature of Court Master.

22. The appellant has deposited the entire amount with the Registrar General of this Court in terms of order dated 5th February, 2009. The Registry is directed to release the same in terms of the award of the learned Tribunal within four weeks.

J.R. MIDHA, J

MAY 21, 2009
j

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 405/2009

RELIANCE GENERAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. Sameer Nandwani, Adv.

versus

RACHAN DEVI & ORS. ..... Respondents
Through : None.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 26.08.2009

MAC.APP. No.405/2009 and CM Nos.11954-55/2009

1. Issue notice to claimants/respondent Nos.1 to 4 by ordinary process as well as registered AD post returnable on 14th October, 2009.

2. The LCR be requisitioned before the next date of hearing.

3. Subject to deposit of the entire award amount along with interest by the appellant with the UCO Bank A/c Rachna Devi, Delhi High Court Branch within 30 days, the execution of the impugned award shall remain stayed.

4. The order with respect to the disbursement of the award amount shall be passed on the next date of hearing after hearing the claimants.

5. If the steps for service of the respondents are not taken by the appellant within one week or if the process fee is filed but is returned under objections and the objections are not removed within three days, the Registry shall issue Court notice to the respondents by ordinary process as well as Registered AD and in that event, the appellant shall deposit cost of Rs.5,000/- for the default in taking steps before the next date of hearing and the appeal shall be heard subject to the said cost. If the appellant fails to deposit the cost before the next date of hearing, the same shall be deducted out of the statutory amount deposited along with the appeal.

6. The cost of Rs.5,000/- shall be retained by the Registrar (Appeals) under separate head of Motor Accident Appeals and the expenses for issuing the Court notices shall be met out of the same. The remaining amount shall be retained by the Registrar (Appellate) to meet the expenditure incurred for obtaining the

opinion of the doctors/hospital in respect of poor claimants who have suffered grievous injury/permanent disability in the road accidents and this Court deems necessary to obtain the expert opinion to compute the compensation and the injured is unable to bear the expenses of the expert.

7. Copy of this order be given 'Dasti' to learned counsel for the appellant under the signature of Court Master.

8. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

AUGUST 26, 2009
Mk

26

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.475/2008

Date of Decision: 11th January, 2010

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NATIONAL INSURANCE CO. LTD ..... Appellant
Through : Mr. Amit Kumar Pandey, Adv.

versus

SHAKUNTALA & ORS ..... Respondents
Through : Mr. Piyush Prabhakar, Adv.
for R-1 to 5.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.9,50,000/- has been awarded to claimants/respondents No.1 to 5. The appellants seek reduction of the award amount.

2. The accident dated 6th October, 2001 resulted in the death of Uma Shankar. The deceased was survived by his widow, one son and three daughters who filed the claim petition before the

learned Tribunal.

3. The deceased was aged 32 years at the time of the accident and was working as a driver with M/s Bansal Building Material Suppliers earning Rs.4,500/- per month. The learned Tribunal added 50% towards future prospects, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.9,18,000/-. Rs.32,000/- has been awarded towards loss of love and affection, consortium and funeral expenses. The total compensation awarded is Rs.9,50,000/-.

4. The only ground urged by learned counsel for the appellant at the time of hearing of this appeal is that the income of the deceased has not been sufficiently proved and, therefore, the minimum wages should be taken into consideration for computing the compensation.

5. The widow of the deceased appeared in the witness box as PW-1 and deposed that her husband was working with M/s Bansal Building Material Suppliers earning Rs.4,500/- per month besides other benefits and facilities. The colleague of the deceased appeared in the witness box as PW-3 and deposed that the deceased was working with M/s Bansal Building Material Suppliers drawing a salary of Rs.4,500/- per month besides

benefits/facilities such as overtime. The employer of the deceased also appeared in the witness box as PW-4 and deposed that he was paying Rs.4,500/- per month as salary to the deceased apart from overtime of Rs.800/- to Rs.1,000/- per month.

6. The learned counsel for the appellant submits that PW-4, in cross-examination, admitted that he was not maintaining any accounts or register and further that the deceased was a daily wager and wages were paid in cash. The learned counsel for the appellant submits that the admission of PW-4 that the deceased was a daily wager means that the deceased was being paid the salary according to the Minimum Wages Act. The interpretation of the statement of PW-4 by learned counsel for the appellant is not correct. PW-4 has clearly stated in his testimony that he was paying Rs.4,500/- per month as salary to the deceased. Even if the salary was calculated according to the daily wages, it can be more than the minimum wages fixed under the Act and no question was put to the witness by the appellant that the wages of the deceased were less than Rs.4,500/- per month. From the statement of PW-1, PW-3 and PW-4, it has been sufficiently proved that the deceased was earning Rs.4,500/- per month. It may also be noted that the proceedings under Sections 168 and

169 of the Motor Vehicles Act are in the nature of summary inquiry and the proof on record is sufficient to prove the income of the deceased.

7. The learned counsel for the appellant further submits that the multiplier be reduced from 17 to 16 in view of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129.** In the case **Sarla Verma (supra),** the Hon'ble Supreme Court has laid down the following principles for computation of compensation:-

I. MULTIPLIER

Age of the deceased (in years)	**Multiplier**
15 – 20	18
21 – 25	18
26 – 30	17
31 – 35	16
36 - 40	15
41 - 45	14
46 - 50	13
51 - 55	11
56 – 60	09
61 - 65	07
Above 65	05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

(i) Deduction towards personal expenses. : 1/2 (50%)

(ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

Deceased – married

(i)	2 to 3 dependent family members.	:	1/3rd
(ii)	4 to 6 dependent family members.	:	1/4th
(iii)	More than 6 family members	:	1/5th
(iv)	Subject to the evidence to the contrary.	:	Father, brother and sisters will not be considered as dependents.

III. <u>FUTURE PROSPECTS</u>

(i)	Permanent job below 40 years of age	:	Actual salary – tax + 50% towards future prospects.
(ii)	Permanent job between 40 – 50 years	:	Actual salary – tax +30% towards future prospects.
(ii)	More than 50 years with: permanent job.		Actual salary only. No addition for future prospects.
(iv)	Deceased employed at a fixed salary (without provision for annual increments)	:	Only actual income to be taken. No addition.
(v)	Departure from this Rule	:	Only in rare and exceptional cases involving special circumstances.

IV. <u>NON-PECUNIARY DAMAGES</u>

(i)	Compensation for loss of estate	:	Rs.5,000/- to Rs.10,000/-
(ii)	Compensation for loss of consortium	:	Rs.5,000/- to Rs.10,000/-
(iii)	Compensation for pain and sufferings and hardship	:	Nil
(iv)	Funeral expenses, cost of transportation of body and medical expenses"	:	Actual

8. Following the aforesaid judgment, the deduction is liable to be reduced from 1/3rd to 1/4th and multiplier is liable to be reduced from 17 to 16. The loss of dependency is liable to be

enhanced from Rs.9,18,000/- to Rs.9,72,000/- [(Rs.4,500 + 50% of Rs.4,500) x ¾ x 12 x 16). However, since there are no cross-objections by the claimants, the enhancement is not warranted in this matter.

9. For all the aforesaid reasons, the appeal is dismissed.

10. The appellant has deposited the entire award amount along with interest with the Registrar General of this Court in terms of the order dated 5th February, 2009. The Registrar General is directed to remit/transfer the entire award amount along with interest to UCO Bank, Delhi High Court Branch A/c Shakuntala within three weeks.

11. Upon the receipt of the aforesaid award amount by UCO Bank, UCO Bank is directed to keep as sum of Rs.12,00,000/- in fixed deposit in the following manner:-

(i) Fixed deposit of Rs.2,00,000/- in the name of respondent No.3 till she attains the age of 20 years.

(ii) Fixed deposit of Rs.2,00,000/- in the name of respondent No.4 till she attains the age of 20 years.

(iii) Fixed deposit of Rs.2,00,000/- in the name of respondent No.5 till she attains the age of 20 years.

(iv) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of one year.

(v) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of 1-½ years.

(vi) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of two years.

(vii) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of 2-½ years.

(viii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of three years.

(ix) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 3-½ years.

(x) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of four years.

(xi) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 4-½ years.

(xii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of five years.

(xiii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 5-½ years.

(xiv) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of six years.

(xv) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 6- ½ years.

12. The remaining amount be released equally to respondents No.1 and 2 by transferring the same in their respective Saving Bank Accounts.

13. The interest on all the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.1.

14. Withdrawal from the aforesaid accounts shall be permitted to respondent No.1 after due verification and the Bank shall issue photo Identity Card to respondent No.1 to facilitate identity.

15. No cheque book be issued to respondent No.1 without the permission of this Court.

16. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to respondents No.1 to 5 along with the photocopy of the FDRs.

17. The original Fixed Deposit Receipts shall be handed over to respondents No.1 to 5 on the expiry of the period of the FDRs.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of respondents No.1 to 5, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondents No.1 to 5.

21. Respondents No.1 to 5 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

22. The statutory amount of Rs.25,000/- be refunded back to the appellant through counsel within four weeks.

23. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

24. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

JANUARY 11, 2010/aj

6

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.13/2007

Date of Decision: 14th July, 2009

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NATIONAL INSURANCE CO.LTD. ..... Appellant
Through : Mr. Amit Kumar Pandey, Adv.

versus

FARZANA ORS. ..... Respondents
Through : Mr. Arun Srivastava and
Ms. Anupama Srivastava, Advs.
for R – 1 & 2.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby the compensation of Rs.3,62,500/- has been awarded to the appellants.

2. The accident dated 10th May, 2000 resulted in the death of Master Farman aged 7 years. The parents of the deceased filed the claim petition before the learned Tribunal. The deceased was

a student of IInd standard in P.D. Public School. The learned Tribunal took the notional income of the deceased to be Rs.22,500/- and applied the multiplier of 15 to compute the loss of dependency to be Rs.3,37,500/-. Rs.10,000/- has been awarded towards medical expenses and Rs.5,000/- each has been awarded towards transportation of the dead body, funeral expenses and loss of estate. The total compensation is awarded Rs.3,62,500/-.

3. The learned counsel for the appellant submits that the learned Tribunal has not made 1/3rd deduction towards the personal expenses of the deceased while computing the compensation. The second ground submitted by learned counsel for the appellant is that the Second Schedule of the Motor Vehicles Act provides for notional income of Rs.15,000/- whereas the learned Tribunal has taken the notional income to be Rs.22,500/- in the absence of any evidence.

4. In the case of ***Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257,*** the Hon'ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

> "As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-"

5. The case of **Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997** relates to the death of a 12-year old boy. Following the decision of the Apex Court in **Manju Devi's case (supra)**, the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in ***Manju Devi's case* (supra)** awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

> "3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and

moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to Rs.15,000 x 15 = Rs.2,25,000/-.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda.

Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of **R.K. Malik vs. Kiran Pal, III (2006) ACC 261,** 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as **R.K. Malik vs. Kiran Pal, 2009(8) Scale 451**. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children. The findings of the Hon'ble Supreme Court are as under:-

19. The other issue is with regard to non-pecuniary compensation to the appellants-dependents on the loss of human life, loss of company, companionship, happiness, pain and suffering, loss of expectation of life etc.

20. In the Halsbury's Laws of England, 4th Edition, Vol. 12, page 446, it has been stated with regard to non-pecuniary loss as follows:

> “Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

21. In the case of Ward v. James (1965) I All E R 563, it was observed:

> “Although you cannot give a man so gravely injured much for his `lost years', you can, however, compensate him for his loss during his shortened, span, that is, during his expected `years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless

> invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.

22. The Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551, at page 556, has observed as follows in para 9:

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is

shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In this case, the Court awarded non-pecuniary special damages of Rs. 3, 00,000/- to the claimants.

23. In Common Cause, A Registered Society v. Union of India (1999) 6 SCC 667 @ page 738, it was observed:

"128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In Mediana, Re Lord Halsbury, L.C. observed as under: "How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognises that as a topic upon which damages may be given."

24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional

attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation need not be restricted to a case where the injured person himself initiates action but is equally admissible if his dependant brings about the action.

25. That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression "standard compensation" and "conventional amount/sum" to get over the difficulty that arises in quantifying a figure as the same ensures consistency and uniformity in awarding compensations.

26. While quantifying and arriving at a figure for "loss of expectation of life", the Court have to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head i.e. pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of

prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term "conventional compensation" used in the said case has been used for non pecuniary compensation payable on account of pain and suffering as a result of death. The Court in the said case referred to Rs. 50, 000/- as conventional figure. The reason was loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

28. In Lata Wadhawa case (supra), wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards `conventional compensation". In the case of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12, 000/- per annum as recommended by Justice Y. V.Chandrachud Committee. This was in view of the fact that the company in question had an

un-written rule that every employee can get one of his children employed in the said company.

29. In the case of M.S. Grewal v. Deep Chand Sood MANU/SC/0506/2001, wherein 14 students of a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, this Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasized that the Court must ensure that a just compensation was awarded.

30. In Grewal case (supra), compensation of Rs. 5 lakhs was awarded to the claimants and the same was held to be justified. Learned Counsel for the respondent No. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said

aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala S. R. T. C. v. Susamma Thomas(1994) 2 SCC 176; Sarla Dixit v. Balwant Yadav (1996) 3 SCC 179; and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

33. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to R. D. Hattangadi case (supra). Further, the said compensation must be just and

reasonable. This Court has observed as follows in State of Haryana v. Jasbir Kaur (2003) 7 SCC 484:

> “7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.”

> 34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We do not find any infirmity in that regard."

9. The learned Tribunal was in error in taking the notional income to be Rs.22,500/- per annum. Following the aforesaid judgments, the notional income of the deceased is taken to be Rs.15,000/- per annum and applying the multiplier of 15, the claimants are entitled to loss of dependency of Rs.2,25,000/-. The claimants are also entitled to compensation of Rs.75,000/- towards the future prospects in terms of the judgment of the

Hon'ble Supreme Court in **R.K. Malik Vs. Kiran Pal, 2009 (8) Scale 451**. The claimants are also entitled to a further sum of Rs.75,000/- towards non-pecuniary damages in terms of the judgment of this Court in the case of **R.K. Malik Vs. Kiran Pal, III (2006) ACC 261** upheld by the Hon'ble Supreme Court. The claimants are entitled to total compensation of Rs.3,75,000/- (Rs.2,25,000/- + Rs.75,000/- + Rs.75,000/-).

10. The learned Tribunal has awarded a sum of Rs.3,62,500/- to the claimants. The claimants have not filed any counter claim and, therefore, the amount awarded by the learned Tribunal cannot be enhanced.

11. The award of the learned Tribunal is upheld for the reasons stated above.

12. The appeal is dismissed. No costs.

13. The ex-parte stay order dated 9th January, 2007 is vacated. The appellant has deposited 2/3rd of the award amount in terms of the order dated 9th January, 2007 which has been released to the claimants. The appellant is directed to deposit the remaining award amount along with up to date interest with the learned Tribunal within 30 days. Upon the said deposit being made, the

learned Tribunal is directed to disburse the same to the claimants in terms of its award.

J.R. MIDHA, J

JULY 14, 2009
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18

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 486/2000 and CM No.7605/2009

Reserved on : 29th May, 2009
Date of Decision: 10th June, 2009

%

UNION OF INDIA ..... Appellant
Through : Mr. A.K. Bhardwaj, Sr. Adv.
with Mr. M.P. Singh, Adv.

versus

SHAM LAL & ORS. ..... Respondents
Through : Respondent in person.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

JUDGMENT

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.6,67,200/- has been awarded to respondent No.1.

2. The accident dated 30th June, 1996 resulted in grievous injuries to respondent No.1 and he has become paraplegic with permanent disability certified to be 90% as per Ex.PW-3/B. The

learned Tribunal awarded compensation of Rs.6,67,200/- towards the loss of income to the claimant. However, no compensation has been awarded for pain, suffering, loss of amenities of life, future medical treatment, etc.

3. The appellant has challenged the impugned award on various grounds:-

(i) The claimant/respondent No.1 having been prematurely retired on medical grounds is entitled to and is receiving invalid pension apart from benefits of gratuity, leave encashment, provident fund, etc. received by him.

(ii) The claimant had 12 years service left with All India Radio and, therefore, the multiplier of 13 is not appropriate.

(iii) The amount awarded is highly excessive considering that the claimant was earning only Rs.3,600/-.

(iv) The driver of the Government vehicle was not rash and negligent as he saved the precious life of a child and in the process hit the pavement.

4. The appellant's contention that the claimant has been prematurely retired on medical grounds and is receiving invalid pension, is not a ground for denying compensation to him. The

claimant is entitled to compensation according to the well settled principles of motor accident compensation.

5. With respect to the contention of the appellant that the amount is excessive, this Court is of the view that the compensation is grossly inadequate. The learned Tribunal has only computed the loss of income and has not considered the other heads for award of compensation such as compensation for pain and suffering, compensation for loss of amenities of life, future medical treatment, etc. Even the compensation for loss of income is inadequate as the learned Tribunal has not taken the future prospects of the claimant into consideration.

6. With respect to the contention of the appellant that the driver of the Government vehicle was not rash and negligent as he saved the precious life of the child and in the process hit the pavement, the evidence on record is contrary and clearly points out to the rashness and negligence of the driver of the Government vehicle. In fact, the accident has been admitted by the driver of the Government vehicle. It is also admitted that the Government vehicle did hit the patri. However, the explanation given that the claimant lost his balance and fell along with other cyclists has been rightly rejected by the learned Tribunal because the injuries are so serious and the claimant's spine got fractured

at so many places that it was not possible by simple fall by entanglement of the cycles. The statement of the driver that the Government vehicle did not touch the cycle is not supported by the evidence which points out to the contrary. The finding of the learned Tribunal that the accident occurred due to the rash and negligent driving of the Government vehicle is upheld.

7. For the aforesaid reasons, the appeal is dismissed. The claimant has filed the cross-objections before this Court for enhancement of the compensation. The claimant has also led additional evidence in support of the cross-objections.

8. The claimant was admitted in BLK Memorial Hospital, Pusa Road, New Delhi on 13th May, 2009 and remained there till 15th May, 2009. The hospital has carried out various tests including Blood Test, X-Ray Cervical Spine, MRI Cervical Spine, MRI Dorsal Spine and the claimant has been examined by various doctors including Dr. Suneel Kumar, Head of the Department, Orthopedic Surgery who appeared in the witness box as PW-1 before this Court and was cross-examined by the learned counsel for the appellant.

9. The report of Dr. Suneel Kumar along with the complete record of the patient in BLK Memorial Hospital has been exhibited as Ex.PW1/1 collectively. According to the statement of Dr. Suneel

Kumar and his report – Ex.PW1/1, the claimant is quadriparetic (weakness of limbs). The claimant is unable to sit or stand. He is totally bed ridden and dependent upon his attendants even for most miniscule activity. His activities are restricted in all spheres of life. Dr. Suneel Kumar is of the view that implantation of a device called Baclofen Pump would improve his quality of life and he may even be able to stand up with some support. The cost of the implantation of Baclofen Pump is approximately Rs.8,00,000/- to Rs.9,00,000/-. The surgical procedure shall take two days of admission of the claimant in the hospital. The implantation of the device shall have to be supplemented with intensive rehabilitation programme. The doctor has submitted in his report that the approximate cost of transportation and physiotherapy charges for a period of one year shall be Rs.3,000/- per day. However, on being asked to provide physiotherapy at hospital at subsidized rates, the doctor agreed that the physiotherapy along with hospital charges of bed and meals shall be provided at the rate of Rs.1,000/- per day and rehabilitation programme would require at least 6-8 weeks. PW-1 has further stated in his report that the claimant would require attendant which would cost about Rs.8,000/- per month. Considering that the claimant belongs to the poorest strata of the society, full time attendant may not be

trained to give him support and physiotherapy and Rs.8,000/- per month is on a higher side, Dr. Suneel Kumar agreed that the hospital shall provide a nursing attendant to visit the claimant six days a week to provide physiotherapy as well as other support required by him at the cost of Rs.5,000/- per month.

10. From the testimony of PW-1, Dr. Suneel Kumar and Ex.PW1/1, it is proved that the claimant shall require the following treatment in respect of his present condition:-

(i) Implantation of Baclofen Pump cost of approximately Rs.8,00,000/- to Rs.9,00,000/-.

(ii) After the surgery, intensive rehabilitation programme costing Rs.1,000/- per day for a period of 6-8 weeks.

(iii) Nursing attendant from the hospital to attend to the claimant six days a week costing Rs.5,000/- per month.

(iv) Motorized Wheel Chair costing Rs.1,50,000/-.

11. The learned amicus curiae submits that the claim petition was filed before the learned Tribunal under Section 166 of the Motor Vehicles Act and the complete evidence was led before the learned Tribunal. However, the learned Tribunal on its own without any application from any of the party and without any basis converted the claim petition to Section 163A of the Motor

Vehicles Act and awarded the lower compensation. The learned counsel for the claimant further submits that the negligence was duly proved by the statement of the witnesses and, therefore, there was no occasion for the learned Tribunal to convert the claim petition under Section 166 of the Motor Vehicles Act to the petition under Section 163A of the Motor Vehicles Act which is a provision for no fault liability and can be invoked where the claimants are not able to prove the negligence. The learned Tribunal was in error in converting the claim petition to Section 163A of the Motor Vehicles Act. The finding to this effect is, therefore, set aside. The claim petition is treated to be under Section 166 of the Motor Vehicles Act.

12. The claimant is entitled to non-pecuniary damages including the compensation for pain and suffering and the compensation for loss of amenities of life being unable to walk, run and sit, compensation for expectation of life on account of injury and longevity of the life, disfigurement, discomfort, inconvenience, hardship, disappointment, frustration and mental stress in life. The Hon'ble Supreme Court in the case of **R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd., 1995 ACJ 366** awarded Rs.1,50,000/- under the head of loss of expectation of life. Following the aforesaid judgment of the Hon'ble Supreme

Court, this Court in the case of **Virender Singh vs. Anand Prakash, 2007 RLR 532** awarded Rs.1,50,000/- towards pain and suffering in respect of the claimant who had suffered 100% permanent disability, Rs.1,50,000/- under the head of loss of expectation of life and Rs.50,000/- towards depression and mental stress in life. Relevant portion of the judgment is reproduced hereunder:-

> "30. Non pecuniary damages includes the following:-
>
> (i) Pain and suffering.
> (ii) Damages for mental and physical shock.
> (iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.
> (iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.
> (v) Disfigurement.
> (vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.
>
> 31. Pain and suffering:- Pain and suffering compensates victim for the physical and mental discomfort caused by the injury. Pain is physical; suffering is emotional. While pain is the physiological response to certain stimuli, suffering is psychological or emotional response to pain.
>
> 32. In the decision reported as *R.D.Hattangadi vs. Pest Control (India) Pvt. Ltd*. 1995 ACJ 366 because of the accident, the appellant in said

case became a paraplegic and suffered 100% permanent disability. Date of accident was 20.5.1980. Appellant in said case had remained hospitalized for a period from 20.5.1980 to 2.8.1980. Analyzing the law relating to non pecuniary damages, compensation in sum of Rs.1,50,000/- was awarded under the head 'pain and suffering'.

33. In the light of *Hattangadi's* case (supra); noting the period of hospitalization of injured; the 100% physical disability suffered by him, I award compensation in sum of Rs.1,50,000/- under the head 'pain and suffering'.

34. Loss of expectation of life:- Compensation for loss of expectation of life compensates victim for the limitation, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or the individual's inability to pursue his talents, recreational interests, hobbies or avocations. In essence, compensation for loss of expectation of life compensates an individual for loss of life and loss of the pleasures of living.

35. In the *Hattangadi's* case (supra) compensation in sum of Rs.1,50,000/- were awarded under the head 'loss of expectation of life'.

36. On the same analogy, I consider it reasonable to award compensation in sum of Rs.1,50,000/- under the head 'loss of expectation of life'.

37. Depression and mental stress in life:- A person not only suffers injuries on account of the accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. The

> appellant is reduced to a vegetable existence. I award compensation in sum of Rs.50,000/- under the said head."

13. Following the aforesaid judgments of the Hon'ble Supreme Court and this Court, a sum of Rs.1,50,000/- is awarded towards pain and suffering and Rs.1,50,000/- towards loss of amenities of life and loss of expectation of life.

14. With respect to the pecuniary damages, a sum of Rs.8,50,000/- is awarded for implantation of Baclofen Pump, Rs.56,000/- is awarded for rehabilitation programme for eight weeks @ Rs.1,000/- per day and Rs.1,50,000/- is awarded for motorized wheel chair.

15. With respect to the requirement of a nursing attendant, Rs.1,50,000/- is awarded for two and a half years calculated @ Rs.5,000/- per month. The claimant is 62 years old and considering the life expectancy of 65 years, the attendant charges are allowed for a period of two and a half years.

16. With respect to the compensation for loss of income, the learned Tribunal has not taken the future prospects into consideration as per the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** decided on 15th April, 2009.

However, considering that the claimant is drawing some pension, computation of loss of income is not being interfered with.

17. The learned Tribunal has not awarded any amount for conveyance and special diet. Considering the facts and circumstances of this case, Rs.15,000/- is awarded for special diet and Rs.35,000/- towards conveyance. The total compensation is enhanced by Rs.15,56,000/- (Rs.1,50,000/- + Rs.1,50,000 + Rs.8,50,000/- + Rs.56,000/- + Rs.1,50,000/- + Rs.1,50,000 + Rs.15,000/- + Rs.35,000/-).

18. The appeal is dismissed and the cross-objections are allowed. The award of the learned Tribunal is enhanced from Rs.6,67,200/- to Rs.22,23,200/-. Rs.12,06,000/- has been awarded to the claimants towards the cost of implantation of Baclofen Pump, rehabilitation programme, cost of nursing attendant and purchase of motorized wheel chair. This expense has yet to be incurred by the claimant and, therefore, no interest is being awarded on this amount. With respect to the remaining amount of Rs.3,50,000/- towards the compensation for pain and suffering, loss of amenities of life and loss of expectation of life, compensation for special diet and conveyance, the interest @ 7.5% is awarded from the date of filing of the petition i.e. 3rd January, 1997 up to the date of the award by the learned Tribunal

on 31st July, 2000. No interest is being awarded after the date of the award as the claimant did not file the appeal and the cross-objections have been filed only on 20th May, 2009.

19. The enhanced amount be deposited with the Registrar General of this Court within 30 days. With respect to the compensation of Rs.12.06 lacs towards the installation of Baclofen Pump, rehabilitation programme, nursing attendant and cost of motorized wheel chair, the cheque be prepared in the name of the Registrar General, Delhi High Court, who shall keep the same in fixed deposit in the name of Registrar General A/c Sham Lal for a period of six months with cumulative interest and the said amount shall be released to the concerned hospital and the supplier of the motorized wheel chair upon the invoices being filed with this Court. BLK Memorial Hospital is directed to start the treatment of the claimant immediately upon the deposit of the award amount. After the implantation of Baclofen Pump, BLK Memorial Hospital shall raise the invoice in the name of the claimant and shall submit to the learned amicus curiae who shall file the same in this Court for release of the amount. It is made clear that if the expenditure on treatment exceeds Rs.8,50,000/-, BLK Memorial Hospital shall bear the same and shall complete the treatment but shall not leave the treatment in between and

shall not claim any further amount from the claimant. With respect to motorized wheel chair, the order be placed with the supplier and the invoice be submitted through the learned amicus curiae whereupon the amount shall be released to the supplier. With respect to the compensation of Rs.3,50,000/- towards pain and suffering, loss of amenities of life and loss of expectation of life, compensation for special diet and conveyance, the interest awarded from the date of the institution of the claim petition i.e. 3rd January, 1997 up to the date of the award i.e. 31st July, 2000 comes to Rs.93,889/-. The principal amount of Rs.3,50,000/- along with interest of Rs.93,889/- comes to Rs.4,43,889/-. The cheque for Rs.3,00,000/- be issued in the name of UCO Bank A/c Shyam Lal for being kept in fixed deposit for a period of five years on which monthly interest shall be payable to the claimant which shall be credited in the savings account of the claimant. Since the claimant is 90% disabled and unable to work, UCO Bank shall send the monthly interest personally to the claimant as a special case. The remaining amount of Rs.1,43,889/- be paid by the appellant to the claimant by means of an account payee cheque drawn in the name of the claimant.

20. Vide order dated 23rd April, 2009, this Court appointed Mr. Pankaj Seth, Advocate as amicus curiae who has very effectively

assisted this Court in the present case. The learned amicus curiae got the claimant admitted in the BLK Memorial Hospital from 13th May, 2009 to 15th May, 2009 for tests and medical opinion. The learned amicus curiae also filed the cross-objections on behalf of the claimant and also led the additional evidence of doctor from BLK Memorial Hospital. It is further noted that the learned amicus curiae visited the hospital on 13th May, 2009 to meet the concerned doctors and request them to appear as a witness. This Court records the appreciation for the learned amicus curiae for his assistance. The fees of the learned amicus curiae is fixed at Rs.15,000/-to be paid by Delhi High Court Legal Services Authority.

21. List for compliance on 8th July, 2009.

22. Copy of this order be given 'Dasti' to learned counsel for the parties and learned amicus curiae under signatures of Court Master.

J.R. MIDHA, J

JUNE 10, 2009
aj**/**j

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP.No.76/2005

Reserved on : 28th January, 2009

% Date of decision: 31st March, 2009

SHER SINGH ..... Appellant
Through : Mr. Sanjiv Sharma, Amicus Curiae.

versus

NARESH KUMAR & ORS. ..... Respondents
Through : Mr. A.K. Soni, Adv. for R-3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

JUDGMENT

1. The appellant has challenged the award dated 28th September, 2004 passed by the learned Tribunal whereby compensation of Rs.31,000/- has been awarded to him. The appellant seeks enhancement of the award amount.

2. On 28th February, 1999, the appellant and his son were travelling in a rickshaw cycle from Mangolpuri for taking a bus to New Delhi Railway Station when Jeep No.DL-8C B8918 came from

the opposite direction and hit the rickshaw resulting in serious injuries to the appellant. The appellant was taken to Sanjay Gandhi Memorial Hospital and thereafter shifted to Military Hospital, Delhi Cant. He remained hospitalized till 10th June, 1999. The appellant was also treated at All India Institute of Medical Sciences. The appellant suffered permanent disability of 25% of left lower limb due to post traumatic deformity of left lower limb with restricted range of motion of left hip joint.

3. The appellant was 43 years of age at the time of the accident and was working as Hawaldar in Indian Army earning Rs.10,500/- per month. The appellant was retired from the Army on 31st March, 2001. The appellant claims to have been retired as he became unfit for Army service. The appellant further claims that but for the disability suffered in accident, he would have continued working and would have got promotion to the post of Naib Subedar and then Subedar and so on. The appellant is now drawing a pension of Rs.2275/- per month. The appellant further claims that he would have got a civil job after retirement but due to disability, he is unable to do any work.

4. At the trial of this case, the appellant appeared as PW—1 and proved the disability certificate, Ex.P-1. The appellant also produced three other witnesses. PW – 2, Clerk of Sanjay Gandhi

Memorial Hospital proved the MLC - Ex.PW.2/1. PW – 3, Head Constable, Yogender from P.S. Sultanpuri proved the FIR - PW3/1. PW—4, Shankar Lal is the eye witness of the accident.

5. The learned Tribunal awarded Rs.31,000/- as compensation along with interest @5% per annum to the appellant. The break-up of Rs.31,000/- is as under:-

(i) Rs.5,000/- towards medical expenses.

(ii) Rs.500/- towards special diet.

(ii) Rs.500/- towards conveyance.

(ii) Rs.25,000/- towards pain and suffering and loss of amenities.

6. The appellant has challenged the impugned award on the following grounds:-

(i) Enhancement of medical expenses, special diet, conveyance and attendant.

(ii) Award of compensation of loss of earning capacity.

(iii) Award of compensation towards loss of income during treatment.

(iv) Enhancement of compensation for pain and suffering.

(v) Enhancement of compensation for loss of amenities.

7. With respect to appellant's claim of medical expenses, special diet, conveyance and attendant, the appellant appeared in witness box as PW-1 and stated that his family came to Delhi to stay when he was hospitalized. He stated that he spent on medicines when

he was on sick leave for eight weeks. However, no proof of medical expenses has been given by the appellant. It appears that the medical expenses of the appellant were borne by the Army. However, considering that the family of the appellant came from outside (the appellant is a permanent resident of District Champawat, Uttranchal) to stay and would have incurred some amount on conveyance, diet etc., the amount of Rs.6,000/- awarded by the learned Tribunal for medical expenses, special diet and conveyance is enhanced to Rs.10,000/-.

8. The appellant suffered 25% disability which has reduced his earning capacity and, therefore, he claims compensation on this account. The appellant was earning Rs.10,500/- per month when he retired from Army on 31st March, 2001. He is drawing a pension of Rs.2,275/- per month and after deducting the same from the salary, the net loss comes to Rs.8,225/-. Considering his age at the time of accident, it would be appropriate to apply a multiplier of 15. However, the appellant would be entitled only to 25% of the amount he would have earned for 15 years. The amount, accordingly, comes to Rs.3,70,125/- (Rs.8,225/- X 12 X 15 X 0.25).

9. With respect to the claim towards loss of income during treatment, no evidence has been rendered by the appellant on this account. It appears that the appellant has received full salary

during the treatment. The counsel for the appellant submits that even if the appellant has received full salary, he is entitled to loss of income during treatment. I do not agree with this contention and reject the same.

10. The appellant has challenged that the amount awarded by the Tribunal towards pain and suffering and loss of amenities to be very meager. The appellant remained hospitalized for more than four months and has been 25% disabled and, therefore, he claims compensation of at least Rs.1,00,000/- towards permanent disability and Rs.1,00,000/- towards pain and suffering and loss of amenities.

11. The learned amicus curiae refers to and relies upon the following judgments : -

(i) ***M/s Concord of India Insurance Co. Ltd. vs. Nirmala Devi - 1980 A.C.J. 55.***

In this case, the Apex Court observed that determination of quantum must be liberal and not niggardly since law values life and limb in a free country in generous scales.

(ii) ***R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd. - 1995 A.C.J. 366.***

In this case, the appellant was Judge in City Civil Court for some time till he resigned in 1964 and was thereafter practicing as a lawyer at the time of the accident in the year 1980. The appellant suffered 100% disability. The learned Tribunal awarded Rs.26,25,992/- which was reduced by the High Court to Rs.8,57,352/- against which the appellant approached the Hon'ble Supreme Court. The Hon'ble Supreme Court discussed the entire

law relating to the computation of compensation in injury cases in paras 9,11,12,,13 and 14 of the said judgment.

The Hon'ble Supreme Court awarded Rs.1,50,000/- towards pain and suffering and Rs.1,50,000/- in respect of the loss of amenities of life apart from the other heads in respect of the injuries resulting in paraplegia below the waist and total disability to the appellant. It was also held that while computing the compensation for non-pecuniary loss, while following the precedents, where conventional amount has been awarded, the fall in value of money should be kept in mind.

(iii) ***Rattan Lal Mehta vs. Rajinder Kapoor - 1996 A.C.J. 372.***

The Division Bench of this Court discussed at length the principles for computation of compensation in injury cases. The learned counsel has laid emphasis on paras 6,7,11,12,15,16,17,18,19,23,25,26 and 29 of the judgment, especially para 23 of the judgment where it is held that conventional figures for non-pecuniary damages must keep pace with the times and take into account inflation and advances in science, medicine and rehabilitation. The learned counsel further lays special emphasis on para 28(vi) of the judgment where the Division Bench has held that non-pecuniary damages cannot be kept low because pecuniary damages are high.

(iv) ***Shshendra Lahiri vs. UNICEF - 1998 ACJ 859.***

This case relates to multiple injuries suffered by the appellant in an accident in the year 1977 resulting in several fractures and bone grafting was to be done. The appellant suffered permanent disability of shortening of right leg by three inches. The Tribunal awarded only Rs.33,000/- which was enhanced to Rs.58,000/- by the High Court. The Hon'ble Supreme Court enhanced the award amount to Rs.4,00,000/-. The judgment shows the liberal approach in awarding the compensation.

(v) ***Swatantra Kumar vs. Qamar Ali - 1998 ACJ 920.***

This case relates to the injuries resulting in shortening of leg by 1.75 inches. The Hon'ble Supreme Court increased the award by Rs.1,00,000/-.

(vi) ***Lata Wadhwa & Ors. vs. State of Bihar - (2001) 8 SCC 197.***

In this case, burn injuries to the extent of 10% were suffered by some of the claimants. The Apex Court after discussing the principles for grant of compensation awarded a lump sum amount of Rs.2,00,000/- to each of those persons. The Court observed as under:-

> "In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered.

(vii) ***K. Narasimha Murthy vs. Manager, Oriental Insurance Co. Ltd. - 2004 ACJ 1109.***

In this case, the claimant was a Constable in CRPF who suffered multiple fracture of both legs in an accident dated 21st April, 1996 resulting in 54% permanent disability in respect of the whole body. The Tribunal awarded Rs.1,48,200 against which the matter came in appeal before the Karnataka High Court. The Division Bench discussed the entire law relating to computation of compensation in injury cases in paras 16,17,18,20,21,22,33,38,40 and 41 of the judgment and computed the compensation at Rs.14,00,000/-. The High Court awarded Rs.1,00,000/- for loss of amenities of life, frustration, disappointment, unhappiness and inconvenience, Rs. 10,80,000/- towards loss of future income, Rs.50,000/- towards pain and suffering, Rs.55,800/- towards attendant charges and travelling expenses, Rs.20,000/- towards special diet, Rs. 76,320/- towards loss of income and Rs.20,000/- towards future medical expenses. For computing the compensation for loss of future income, the Division Bench applied a multiplier of 15 in respect of the claimant aged 31 years.

(viii) ***Saurabh Kumar vs. Naresh Kumar - 2007 (3) T.A.C. 420 (Del.).***

This case relates to the accident dated 9th January, 2003 resulting in amputation of right leg above knee of a child aged 13 years. The permanent disability was assessed at 80%. The learned Tribunal awarded Rs.3,18,000/- against which the matter came up in appeal before this court. This Court enhanced the non-pecuniary damages from Rs.1,00,000/- to Rs.3,00,000/- under the head of pain and suffering and loss of future enjoyment of life.

(ix) ***Oriental Insurance Co. Ltd. vs. Satish Sharma - 2007 (4) T.A.C. 921 (Del.).***

This case relates to accident dated 30th November, 2003 resulting in amputation of right leg below knee of a young man aged 26 years resulting in 60% permanent disability. The learned Tribunal awarded 10,34,850/- against which the matter came up in appeal in this court. This Court referred to and relied upon the previous judgments in which the non-pecuniary damages to the tune of Rs.2,80,000/- to Rs.4,00,000/- were awarded for non-pecuniary damages. After discussing the said judgments in para 16, this Court held that between years 1985 to 1990, the Courts have awarded about Rs.3,00,000/- under the head of non-pecuniary damages for amputation of leg resulting in permanent disability of 50% and above. Following the said judgments, this court upheld the award of non-pecuniary damages of 3,25,000/- to the claimant under the head of non-pecuniary damages.

(x) ***Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal -2008 ACJ 1300.***

In this case, the claimants suffered serious injuries in a road accident dated 13th June, 2001 resulting in amputation of right leg below knee and the permanent disability was assessed at 60%. The Tribunal awarded Rs.9,39,045/- against which the matter came up in appeal before this court. This court again examined the previous cases resulting to the non-pecuniary damages for amputation of leg and held that Rs.2,50,000/- awarded to the claimant to be fair and reasonable.

12. Considering the judgments cited above, I find that the Courts have awarded compensation for pain and suffering and for loss of amenities as separate heads. In the present case, the appellant has suffered 23% disability. It would, therefore, be appropriate to

award Rs.25,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities.

13. The total amount payable to the appellant is as under: -

1.	Medical expenses, special diet and conveyance.	-	Rs.10,000/-
2.	Loss of earning capacity	-	Rs.3,60,000/-
3.	Non-pecuniary damages towards pain and suffering	-	Rs.25,000/-
4.	Non-pecuniary damages towards loss of amenities	-	Rs.25,000/-
	Total	-	Rs.4,20,000/-

14. The last contention of the appellant's counsel is that the learned Tribunal has awarded very low interest of 5%. It should be at least 12%. Considering the latest pronouncement of the Hon'ble Supreme Court in the case of **Dharmapal & Ors vs. U.P. State Road Transport Corporation, III 2008 ACC 1 SC,** I allow interest at the rate of 7.5% per annum.

15. This appeal is allowed. The award is enhanced from Rs,31,000/- to Rs.4,20,000/- along with interest @7.5% per annum w.e.f. the date of filing of the petition till the date of payment. No costs.

16. The enhanced amount along with interest be deposited by the respondent with the learned Tribunal within 30 days. The learned Tribunal is directed to release 30% of the amount to the

appellant and remaining 70% of the amount be kept in a fixed deposit for a period of ten years on which no loan, advance or withdrawal be permitted without the prior permission of the learned Tribunal but the periodical interest be permitted be released to the appellant. The learned Tribunal shall first release the cheque towards the amount to be kept in fixed deposit and the remaining amount be released only after the original fixed deposit receipt with proper endorsement is shown to the learned Tribunal and the copy of the FDR duly attested by the Bank is placed on record of the learned Tribunal.

17. I would like to record that this case was taken up on 20th January, 2009 when it was noted that the counsel for the appellant had not been appearing since July, 2007. The appellant is permanently staying at Uttranchal and he visited Delhi only to appear in this case. The appellant expressed his helplessness due to the continuous non-appearance of his lawyer. I, therefore, appointed Mr. Sanjiv Sharma, Advocate, who was present in Court as amicus curiae to assist this Court. Mr. Sanjiv Sharma, Advocate rendered very effective assistance to this Court and I place on record my appreciation for his services. Mr. A.K. Soni, Counsel for respondent No.3, also effectively assisted in this matter.

J.R. MIDHA, J

MARCH 31, 2009
aj

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC. APP. No.220/2008

Reserved on : 22nd January, 2009
Date of decision: 31st March, 2009

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THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. J.P.N. Shahi, Adv.

versus

SATPAL & ORS. ..... Respondents
Through : None.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

J.R. Midha, J.

1. The appellant has challenged the award of the learned Tribunal on the ground that the offending vehicle bearing No.HR-38 0739 was never insured with the appellant.

2. This case is a classic example of Insurance Company raising frivolous pleas before the learned Tribunal as well as before this Court resulting in wastage of judicial time, delay of trial,

harassment to the insured and delay in payment of compensation to the legal representatives of the deceased victim of road accident.

2.1 Respondent No.4 is the owner of truck bearing No.HR-38-0739 who insured the same with the appellant but by mistake, the insurance agent initially mentioned wrong vehicle number on the Cover Note as HR-38-6739 instead of HR-38-0738 which, was on being pointed out, was corrected by the insurance agent on the copy of the insured but the insurance agent did not carry out the correction in the copy with the Insurance Company. However, there was no doubt with regard to the vehicle number because the insurance agent inspected the vehicle and had taken the copy of the registration certificate, permit and fitness certificate at the time of issuance of the cover note which contained the vehicle number. The insured also filled up the proposal form at the time of taking the Cover Note. The aforesaid insurance policy was also issued by the appellant in respect of the same vehicle for the subsequent two years i.e., 1996-97 and 1997-98, which contained the correct vehicle number.

2.2 The Insurance Company took a false plea before the learned Tribunal that they had not insured the vehicle number involved in

the accident as a result of which the ex-parte award was passed against the owner who applied for setting aside the ex-parte award which was set aside subject to deposit of Rs.50,000/-. The owner unsuccessfully challenged the said order before this Court and thereafter, deposited Rs.50,000/- with the learned Tribunal whereupon the ex-parte award was set aside. The Insurance Company again took up the same plea before the Tribunal that they had not insured the offending vehicle.

2.3 The owner of the vehicle led sufficient evidence to prove that the offending vehicle was insured with the appellant. The owner also proved two renewals of the policy which contained correct vehicle number.

2.4 The owner also summoned the witness from the Road Transport Authority to prove that the wrong vehicle number mentioned in insurance records was not owned by him. The name of the owner of that vehicle was also placed on record to prove that the insured had no connection with wrong vehicle number mentioned in the insurance records and, therefore, no insurance policy could have been taken by him or even issued by the Insurance Company in respect of the said vehicle. The appellant did not cross-examine the witnesses of the owner on material

particulars. No evidence was led by the appellant to rebut the evidence of the owner.

2.5 The learned Tribunal passed an award against the appellant and imposed cost of Rs.25,000/- on the appellant for taking the dishonest plea to avoid its liability by taking advantage of the mistake of the agent in noting a wrong vehicle number on the cover note.

2.6 Despite very clear finding, the appellant has challenged the award before this Court again raising the same false plea.

2.7 The frivolous defence of the appellant before the learned Tribunal has resulted in irreparable loss and injury to the claimants who lost their young son on 29th May, 1996 and the final award was passed by the Tribunal on 11th January, 2008 and the claimants received the payment after about 12 years.

2.8 The owner of the vehicle also suffered inconvenience for contesting a frivolous litigation with the appellant and suffered an ex-parte award which was ultimately set aside upon deposit of Rs.50,000/- by the owner which he was compelled to challenge before this Court.

2.9 The judicial time wasted before the learned Tribunal and before this Court cannot be computed in terms of money. It is

noted that about 30 hearings took place before the learned Tribunal and 9 hearings took place before this Court.

2.9.1 It is necessary to record that the relevant facts which are given in the succeeding paras.

3. On, 29th May, 1996, a young boy named Vijay Kumar, aged 16 years was going on his bicycle towards Gopi Nath Bazaar in Delhi Cant when he was crushed by truck No.HR-38 0739 near MES GE Office.

4. Respondents No.1 and 2 are the parents of the deceased-Vijay Kumar and they filed the petition before the learned Tribunal claiming compensation of Rs.6,00,000/- from respondent No.3 (driver), respondent No.4 (owner) and the appellant (insurer) of the offending truck.

5. The appellant appeared before the learned Tribunal and filed an application dated 3rd November, 1988 under Section 151 of the Code of Civil Procedure for deletion of their name from the array of the respondents on the ground that cover note No.431483 in the name of Amit Khurana for the period 12th September, 1995 to 11th September, 1996 was issued for vehicle No. HR-38 6739 but the vehicle number has been fraudulently changed to HR-38 0739. It was submitted that there was manipulation in the insurance policy by changing the vehicle No. from HR-38 6739 to HR-38 0739.

6. On 7th October, 1999, the learned Tribunal discharged the appellant from the proceedings by accepting their plea that forgery has been committed in the cover note by changing the vehicle number from HR-38 6739 to HR-38 0739.

7. On 17th February, 2001, the learned Tribunal passed an ex-parte award in favour of respondents No.1 and 2 (parents of the deceased) and against respondent No.3 (driver) and respondent No.4 (owner).

8. On 18th December, 2002, respondent No.4 (owner) filed an application for setting aside of the ex-parte award dated 17th February, 2001 on the ground that the offending truck bearing No. HR-38 0739 was duly insured with the appellant at the time of the accident and respondent No.4 had intimated the appellant of the summons received from the Learned Tribunal and had also requested the appellant to defend the case. Respondent No.4 had also handed over a vakalatnama to the appellant who was obliged to defend the case on behalf of the insured under the policy. This application was allowed by the learned Tribunal vide order dated 20th November, 2004 subject to deposit of Rs.50,000/- with further direction to release the said amount to respondents No.1 and 2 subject to adjustment in the final award.

9. Respondent No.4 unsuccessfully challenged the aforesaid order dated 20th November, 2004 before this Court and thereafter, complied with the order by depositing Rs.50,000/- with the learned Tribunal on 3rd January, 2005 which was released to respondents No.1 and 2 on 4th January, 2005.

10. On 20th December, 2004, respondent No.4 filed an application under Section 170 of the Motor Vehicles Act read with Order 1 Rule 10 of the Code of Civil Procedure for impleading the appellant as a respondent on the ground that the appellant has played fraud and mischief upon the learned Tribunal by taking a false plea before the learned Tribunal, pursuant to which the appellant was discharged and deleted from the array of the parties on 7th October, 1999. This application was allowed vide order dated 18th March, 2006 and the appellant was impleaded as respondent No.3 before the learned Tribunal.

11. The appellant filed the written statement before the learned Tribunal in which once again the same plea was taken that the appellant had insured vehicle No. HR-38 6739 vide cover note No.431483 for the period 12th September, 1995 to 11th September, 1996 and respondent No.4 (owner) had forged and tempered with the cover note by changing the vehicle No. HR-38 6739 into HR-38 0739.

12. The learned Tribunal framed a specific issue, namely, issue No.2 which is reproduced hereunder:-

"2. Whether the offending vehicle was duly insured with Oriental Insurance Co. Ltd."

13. At the trial, respondent No.4 appeared as R2W1 and deposed that he was the registered owner of vehicle No. HR-38 0739 in 1995-96 and he insured the same with Oriental Insurance Co. Ltd. through its agent, Tirlochan Singh vide cover note No.431483 dated 12th February, 1995 for the period 12th September, 1995 to 11th September, 1996. He further stated that he gave copy of certificate of registration of the vehicle, copy of permit and copy of fitness certificate to the agent at the time of the insurance. However, the agent wrongly wrote vehicle No. HR-38 6739 on the cover note instead of HR-38 0739 whereupon respondent No.4 pointed out to the agent who corrected the number on the copy of the cover note provided to respondent No.4. Copy of cover note was marked as R3W1/R1.

13.1 R2W1 (respondent No.4) further deposed that he notified the appellant about the accident on 29th May, 1996. R2W1 stated that he received a letter dated 17th April, 1997-Ex.R3W1/R6 from the appellant in which it was stated by the appellant that they have received the summons from the learned Tribunal and, therefore,

respondent No.4 should send the registration certificate, permit, fitness certificate, driving licence, FIR, site plan, policy, etc. to the appellant.

13.2 R2W1 replied to the above letter on 13th May, 1997-Ex.R2W1/1 in which he stated that he had already informed the appellant about the accident and he further stated that he has also received the summons from the learned Tribunal which were being forwarded to the appellant. The witness attached the copies of the registration certificate, permit, fitness certificate, driving licence, FIR and cover note as demanded by the appellant. R2W1 further deposed that he addressed the letter dated 13th June, 2006 – Ex.R2W1/R8 to the appellant stating that the case was listed before the learned Tribunal on 12th July, 2006. Respondent No.4 attached the copy of the cover note No.431483, insurance policies for the period 1996-97 and 1997-98-Ex.R3W1/R9 and Ex.R3W1/R10, copy of the registration certificate, copy of the letter dated 13th May, 1997 as well as the certificate issued by Excise and Taxation Department, Faridabad with respect to vehicle No. HR-38 6739, owned by Smt. Naina Maghu – Ex.RW2W2/A.

13.3 R2W1 further deposed that he was never the registered owner of vehicle No. HR-38 6739 and he had no connection with the said vehicle. He further deposed that as per the investigation

done, Smt. Naina Maghu wife of Shri Satish Maghu resident of Faridabad was the owner of vehicle No. HR-38 6739. The documents obtained from the office of Assistant Excise and Taxation Officer, Faridabad were exhibited as Ex.RW2W2/A, Ex.RW2W2/B and RW2W2/C.

13.4 The appellant did not cross-examine R2W1 (respondent No.4) with respect to any of the aforesaid statements made as well as the documents exhibited by the witness.

14. Respondent No.4 (owner) produced another witness, namely, Mr. Vivek Aggarwal, Taxation Inspector from the office of the Excise and Taxation Commissioner, Haryana as R2W2 who deposed that vehicle No. HR-38 0739 was registered in the name of respondent No.4 and vehicle No. HR-38 6739 was registered in the name of Smt. Naina Maghu. The witness exhibited the extracts from the demand and disposal register of vehicle No. HR-38 0739 as Ex.R2W2/B and in respect of vehicle No. HR-38 6739 as Ex.R2W2/C.

15. The appellant produced only one witness, namely, Mr. P.R. Bansal who appeared as R3W1 and deposed that the appellant had served notice under Order 12 Rule 8 CPC to respondent No.4. He further deposed that he had brought the premium register as per which respondent No.4 got vehicle No. HR-38 6739 insured with

Oriental Insurance Co. Ltd. for the period 12th September, 1995 to 11th September, 1996.

15.1 R3W1 did not make any statement to rebut what had been proved by R2W1 (respondent No.4).

15.2 The cross-examination of R3W1 is very interesting. He admitted that the cover note is issued by the Development Officer and it is mandatory for him to see the vehicle as well as to check the registration certificate, permit and fitness certificate of the vehicle and to retain the copies of the said documents. The witness was not aware whether it was checked from the Development Officer who had wrongly mentioned the vehicle number. The witness also showed ignorance that vehicle No. HR-38 6739 was registered in the name of Smt. Naina Maghu. The witness admitted the receipt of Ex.R3W1/R7 and Ex.R3W1/R8. The witness also admitted that the policies for the subsequent years, namely, Ex.R3W1/R9 for 1996-97 and Ex.R3W1/R10 for 1997-98 were issued by the appellant.

16. The learned Tribunal decided issue No.2 in favour of respondent No.4 holding that the offending vehicle bearing No. HR-38 0739 was duly insured with the appellant. The findings of the learned Tribunal on issue No.2 are reproduced hereunder:-

"9. **ISSUE NO.2**

This issue is as regard the fact whether offending vehicle was insured with R-3 insurance company. The case of the insurance company that Mr. Amit Khurana had taken a insurance policy earlier in respect of truck no.HR 38 6739 from it and had manipulated the number of the vehicle as HR 38 0739. R-2 while deposing as R2W2 had testified that policy was taken by him in respect of vehicle no. HR 38 0739 from R-3 through agent Trilochan Singh, who by mistake had written the vehicle no. as HR 38 6739 and on being pointed out the mistake, had corrected the vehicle number as HR 38 0739 in the copy supplied to the witness. Further vehicle no. HR 38 6739 had been found to be registered in the name of Smt. Naina Maghu, as per testimony of R2W2 Vivek Aggarwal, a witness from office of Deputy Excise and Taxation Commissioner, Sector 12, Faridabad, Haryana, R-2 had also deposed while deposing as R2W2 that he had no concern with vehicle no. HR 38 6739. R3W1 while deposing on behalf of R-3 insurance company in cross examination admitted the fact that as per the rules of insurance, it was mandatory in case of commercial vehicles to check the registration certificate, permit and the fitness certificate of the vehicle to be insured and further admitted that it was mandatory for the development officer to retain the copies of aforesaid documents but such copies furnished by the insurer while taking the insurance policy had not been produced and the plea being taken on behalf of insurance company is dishonest to avoid its liability taking advantage of the fact that a mistake was committed by its agent while recording the vehicle no. and which was corrected in the copy given to the insurer. Said agent by whom the insurance cover was prepared and premium receipt given, has not been produced by the insurance company nor the documents supporting the contention either in respect of vehicle no. HR 38 0739 or in respect of vehicle no. HR 38 6739. Accordingly, I hold that offending vehicle being HR 38 0739 was duly insured with R-3 Oriental Insurance Company Ltd."

17. The learned Tribunal imposed the cost of Rs.25,000/- on the appellant for taking a false plea that the offending vehicle was not insured with it and continuing with the same stand despite the evidence to the contrary on record and having correct knowledge of all the facts forcing respondent No.4 (owner) to contest the proceedings and to deposit a sum of Rs.50,000/-. It was also recorded that respondent No.4 had also approached this court and was forced to incur unnecessary expenses. The findings of the learned Tribunal in para 13 of the award are reproduced hereunder:-

> " 13. The R-3 insurance company has taken a preliminary objection stating that vehicle in question was not insured with it and continued with the stand right upto the stage of final arguments despite evidence to the contrary on the record and having the correct knowledge of the facts forcing R-2 to contest the proceedings and to deposit a sum of Rs.50,000/- and it was submitted on behalf of R-2 that R-2 had also to approach Hon'ble High Court in the matter and was forced to incur unnecessary expenses. A sum of Rs.25,000/- as exemplary cost is imposed on R-3 insurance company which shall be paid and deposited in the court by R-3 insurance company along with the award amount. Further an amount of Rs.50,000/- which was paid by R-2 and received by petitioner no.2 Smt. Vidya shall be deducted from the award amount by R-3 insurance company and instead, the amount shall be paid along with interest @ 9 per cent per annum to R-2."

18. The appellant has filed this appeal on the ground that the offending vehicle bearing No. HR-38 0739 was not insured with it

and therefore, they are not liable to pay the award amount to the claimants.

19. There is no merit or substance in this appeal. The appeal is misconceived and without any substance. There is clear evidence on record that vehicle No. HR-38 0739 was validly insured with the appellant on the date of accident i.e. 29th May, 1996. The appellant raised a false plea before the learned Tribunal as well as this Court. The appellant is also guilty of making false statements on oath before the learned Tribunal. The appellant again made false statement on oath before this Court in the statement recorded on 22nd January, 2009. The reasons for above finding are as under:-

i) It is an admitted fact that respondent No.4 is the owner of offending vehicle bearing No. HR-38 0739. The registration certificate, permit as well as fitness of the said vehicle are in the name of respondent No.4.

ii). On 12th September, 1995, the respondent No.4 insured the truck bearing No. HR-38 0739 with the appellant through the agent Tirlochan Singh who issued cover note No.431483 but recorded a wrong number, namely, HR-38 6739 which was later on corrected by him on the copy given to respondent No.4. However, the correction was not carried out in the record of the appellant.

iii) The appellant did not produce the agent, Tirlochan Singh to rebut this plea.

iv) The appellant did not produce the copies of the registration certificate, permit, fitness certificate, etc. taken at the time of the issuance of the cover note.

v) The appellant also did not produce the proposal form directed by this Court vide order dated 5th May, 2008.

20. The plea of the appellant that respondent No.4 insured truck No. HR-38 6739 is false and not even plausible because:-

(i) Respondent No.4 is not the owner of truck No. HR-38 6739 and has no connection with the said vehicle.

(ii) Truck No. HR-38 6739 is owned by Smt. Naina Maghu which is proved by the testimony of R2W2 and, Ex.RW2W2/B and Ex.RW2W2/C.

(iii) The appellant has admittedly insured the offending truck No. HR-38 0739 for the subsequent periods 1996-97 (Ex.R3W1/R9) and 1997-98 (Ex.R3W1/R10).

21. It is well settled that only an owner of a vehicle can take an insurance policy. A person who is not the owner can't take the insurance policy because he has no insurable interest in the vehicle. Admittedly, the policy has been taken by the respondent No.4 and respondent No.4 is the owner of only vehicle No.HR-38

0739. Respondent No.4 is not the owner of vehicle No.HR-38 6739 and, therefore, respondent No.4 had no insurable interest in vehicle No. HR-38 6739 which is owned by Ms. Naina Maghu. Respondent No.4 could not have taken and the appellant could not have issued an insurance cover in respect of the vehicle No. HR-38 6739.

22. The cover note bearing No.431483 was issued by the appellant to insure vehicle No. HR-38 0739 but the agent initially mentioned a wrong number by mistake, namely, HR-38 6739 which was corrected on the copy given to respondent No.4 but the corresponding correction was not carried out in the records of the appellant. Although, the appellant was fully aware of the correct position but they raised a false plea knowing it to be false with the dishonest intention of avoiding the liability. The appellant made false statement in the written statement before the learned Tribunal as well as on oath in the witness box. False statements have also been made in the present appeal as well as in the statement recorded on oath on 22nd January, 2009.

23. The appellant has miserable failed in its duty under the law. In the case of **Ramakrishna Reddy vs. Manager, HMT Ltd., 2003 ACJ 105,** the Division Bench of Karnataka High Court held as under:-

"19. We may also at this stage refer to the pernicious habit of some branches of insurance companies in filing stereotyped written statements denying all and everything. They routinely deny the insurance, then alternatively plead that even if there was an insurance, there was a breach of terms of the policy, that driver did not have a valid driving licence, and lastly there was no negligence on the part of driver of the insured vehicle. They do not bother to verify whether the insurance policy covered the risk or not and whether driver had a licence or not. We recognize that insurers are sometimes handicapped for want of full information, while giving instructions to their counsel and, therefore, the objections may be general in nature. We are also conscious that we cannot frown upon a party taking all permissible defences. But, applications for motor accident claims are not to be treated by insurers as normal private adversary litigation, where technical contentions can abound in pleadings and the sole intention is winning the *lis*. Under the policies of insurance, the insurers discharge statutory obligations towards third parties. They should do so keeping in view the object and spirit of the Act, and the position of hapless victims of motor accidents. Insurers should balance their concern to safeguard its financial interest, with their obligations as instruments of social justice, under the *Motor Vehicles Act*.

19.1 The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and insurer of the vehicle involved, fail to pay the compensation. The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle, and they solely depend upon the police for these particulars. The insurer should, therefore, verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the claim or

not, and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies who refuse to recognize their statutory obligations to third parties, under the insurance policies issued to the insured."

24. In another case of **Ramadevsing vs. Chudasma, 1999 ACJ 1129,** the Division Bench of Gujarat High Court held as under:-

"26. So far as the funds to defend their cases are concerned, insurance company would never feel paucity of funds. They raise defences all and sundry and at times their goal is to see that the claim of the claimant, if not defeated is at least delayed. With this purpose and motive they contest the claims under the *Motor Vehicles Act.* We have not come across any case where on receipt of the notice by the claimant(s) for the claim or in service of the summons from the Claims Tribunal the insurance company, more particularly, in cases where insurance of the vehicle is not disputed, offering or making payment at least of the amount which according to it the claimants would be entitled to. We have yet to come across such gesture. The only purpose with which the insurance company depends the claim petition is to see as to how the case of the claimant is defeated and on its failure to do so, how the claim of the claimant would be reduced to a minimum and/or delayed."

25. This is not a simple case of making false statements. It has caused severe and irreparable damage to the claimants and the owner which needs to be recorded. The insured, namely, respondent No.4 reported the accident to the appellant on 17th April, 1997 and, therefore, the appellant was obliged to defend the case before the learned Tribunal. However, the appellant filed a frivolous application before the learned Tribunal and got itself discharged without informing respondent No.4 which resulted in an ex-parte award dated 17th February, 2001. Respondent No.4 had no option but to file an application under Order 9 Rule 13 CPC which was allowed subject to deposit of Rs.50,000/-. Respondent No.4 unsuccessfully challenged that order before this court and, thereafter, deposited Rs.50,000/-. Respondent No.4 had to contest the whole case and finally the award was passed against the appellant on 11th January, 2008.

26. The frivolous plea set up by the appellant also caused great prejudice to respondents No.1 and 2 who lost their only son and the compensation was delayed unnecessarily due to the frivolous plea raised by the appellant. The appellant did not initially satisfy the award and filed the present appeal and also applied for stay and upon being unsuccessful, the appellant finally deposited the

award amount before the learned Tribunal on 30th April, 2008 which was released to respondents No.1 and 2 on 24th July, 2008. Respondents No.1 and 2 (claimants) received the award amount after waiting for 12 years only because of the frivolous plea set up by the appellant.

27. The appeal is dismissed with costs.

28. This appeal is gross abuse and misuse of the process of law. This is a fit case for launching a prosecution under Section 340 of the Code of Criminal Procedure. However, considering that the lower courts are already over-burdened with work, I refrain from invoking Section 340 of the Code of Criminal Procedure but I impose a cost of Rs.60,000/- on the appellant for raising a false plea before the learned Tribunal and making false statements on oath before the learned Tribunal as well as before this Court and wasting the judicial time.

29. The appellant is directed to deposit the cost of Rs.60,000/- with the Registrar General of this court within one week. After depositing the cost with this Court, the appellant shall deduct the cost from the salary of the officers responsible for this case.

30. The copy of this order be also sent Dasti to the Chairman of Oriental Insurance Co. Ltd. who shall determine the responsibility of the concerned officers for deduction of the cost within four

weeks. Compliance report be filed before this Court within three months.

31. List for compliance on 1st May, 2009.

J.R. MIDHA, J

March 31, 2009
aj

18

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP. 457/2007

Date of Decision: 09th July, 2009

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ANIL KUMAR BALUNI & ORS. ..... Appellants
Through : Mr. Sandip Kumar, Adv.

versus

RAJESH KUMAR & ORS. ..... Respondents
Through : Mr. Sunil Sagar and
Mr. Vishal Sehijpal, Advs. for R-1 and 2.
Mr. Ajit K.Singh,Adv. for R-3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.4,54,968/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 8th August, 2004 resulted in the death of

Rekha. The deceased was aged 30 years at the time of the accident and was survived by her husband and two minor children who filed the claim petition before the learned Tribunal.

3. Appellant No.1 appeared as PW-1 before the learned Tribunal and deposed that the deceased was giving tuitions and was earning Rs.4,500/- per month and was also working as garment checker with M/s Mari Gold Corporation. However, no documentary proof was placed on record to prove the income of the deceased. The learned Tribunal assumed the deceased to be a housewife and took the minimum wages into consideration to compute the loss of dependency.

4. The learned counsel for the appellant submits that the learned Tribunal ought to have taken the value of the services of the deceased at Rs.3,000/- per month to compute the loss of dependency. The learned counsel for the appellant has referred to and relied upon the judgment of **Lata Wadhwa vs. State of Bihar, 2001 ACJ 1735** which is recorded in para 11 of the award. The learned counsel further submits that the learned Tribunal erred in taking the minimum wages to compute the loss of dependency.

5. In para 11 of the award, the learned Tribunal has assumed the deceased to be a housewife. In that view of the matter, the

learned Tribunal ought to have taken the value of the services rendered by the deceased as a housewife. Following the judgment of **Lata Wadhwa** (supra), the value of the services of the deceased as a housewife are taken to be Rs.3,000/- per month.

6. The deceased was aged 30 years at the time of the accident and, therefore, the appropriate multiplier is 17 instead of 16 applied by the learned Tribunal. Applying the multiplier of 17, the loss of dependency of the appellants is computed to be Rs.6,12,000/- (Rs.3,000 x 12 x 17).

7. The learned Tribunal has not awarded any compensation towards loss of consortium, loss of love and affection and loss of estate. Rs.2,000/- has been awarded towards funeral expenses and Rs.25,000/- has been awarded towards mental pain and agony.

8. Considering the facts and circumstances of this case, Rs.10,000/- is awarded towards loss of consortium, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and the funeral expenses are enhanced from Rs.2,000/- to Rs.5,000/-. There is no separate provision to award the compensation towards mental pain and agony and, therefore, the award of Rs.25,000/- towards mental pain and agony is set aside.

9. The appellant shall be entitled to a sum of Rs.6,47,000/- (Rs.6,12,000 + Rs.10,000 + Rs.10,000+ Rs.10,000 + Rs.5,000).

10. The appeal is allowed and the award amount is enhanced from Rs.4,54,968/- to Rs.6,47,000/- along with interest @7% per annum from the date of filing of the petition till realization.

11. The enhanced amount along with interest thereon be deposited by respondent No.3 with the learned Tribunal within a period of 30 days. The appellants shall have equal share in the award amount. The share of appellant No.1 be released to him whereas the shares of appellants No.2 and 3, who are minors, be kept in fixed deposit till the date of their attaining majority.

12. Copy of this order be given 'Dasti' to learned counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

JULY 09, 2009
aj

29

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.237/2005 & CM No.5641/2009

Reserved on : 12th May, 2009
Date of Decision: 13th August, 2009

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UNION OF INDIA ..... Appellant
Through : Ms. Madhu Tewatia and
Ms. Sidhi Arora, Advs.

versus

DR. RITA PANT & ORS. ..... Respondents
Through : Mr. S.C. Dhanda, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

JUDGMENT

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.10,35,000/- has been awarded to the appellants. The appellants are seeking reduction of the award amount. The respondents have filed cross-objections to seek the enhancement of the award amount.

2. The accident dated 9th September, 1998 resulted in the death of Ashok Pant. The deceased along with his wife was travelling in a TSR on Janpath, New Delhi when the Air Force Canter bearing No.95-D 100374P hit the TSR due to which the TSR overturned resulting in serious head injuries to the deceased. The deceased was taken to RML Hospital and thereafter shifted to AIIMS where the deceased succumbed to the injuries on 17th September, 1998. The deceased's wife also suffered injuries in the said accident.

3. The deceased was aged 48 years at the time of the accident and was survived by his widow, one minor daughter, one minor son, mother and disabled sister who filed the claim petition before the learned Tribunal.

4. The deceased graduated from Delhi University in 1972 and thereafter joined Institute of Hotel Management, Catering and Nutrition, Pusa, New Delhi in 1975 and completed the Diploma in Hotel Management. In 1983, the deceased joined Culinary Institute of America and completed a course there. The deceased worked for some time with Hotel Oberoi Intercontinental and thereafter joined Hotel Maurya Sheraton, New Delhi where he worked till January, 1991. In January, 1991, the deceased joined Taj Group of Hotels and was posted in Japan. The deceased

worked with Taj Group of Hotels till October, 1995. In October, 1995, the deceased left the job and returned to India and set up his own catering business in the name and style of Food Passions Inc., New Delhi.

5. During his lifetime, the deceased won many awards and medals. He had the unique distinction for cooking personally for the Hon'ble Giani Zail Singh, President of India, Smt. Indira Gandhi, Shri Rajiv Gandhi, King Carlos and Queen Sophia of Spain, Queen Elizabeth and Prince Philip of UK, Shri Henry Kissinger of USA and other VIPs and dignitaries.

6. Respondent No.1 appeared in the witness box as PW-1 and deposed that the deceased was earning about Rs.1,00,000/- per month. PW-1 proved the MLC, High School Certificate, Graduation Certificate, Diploma in Hotel Management and other certificates of the deceased regarding the professional qualifications as Ex.PW1/1 to Ex.PW1/13. PW1 also proved the Certificates of Commendation issued to the deceased and the certificates issued by Taj Mahal Hotel, Maurya Sheraton Hotel as Ex.PW1/14 to Ex.PW1/34. PW-1 also produced the newspaper cuttings pertaining to the articles of the deceased, pamphlet of Welcome Group Award and the articles written by the deceased in various magazines. PW-1 deposed that the deceased worked

abroad in New York, Japan, Bangkok and he represented India in different food festivals and was awarded one gold medal and one bronze medal. PW-1 further proved that the deceased was drawing ¥2,70,000/- equivalent to Rs.1,00,000/- per month from Taj Group of Hotels while posted at Japan. PW-1 further deposed that the deceased returned to India in 1995 to set up his own business in the name of Food Passions Inc., Delhi.

7. Record Clerk from RML Hospital appeared as PW-2 and proved the MLC of the deceased. PW-3 from P.S. Tuglak Road proved FIR-Ex.PW3/1. Record Clerk from Department of Forensic Medicines, AIIMS, New Delhi appeared as PW-4 and proved the post-mortem report-Ex.PW4/1.

8. The income of the deceased for a period of four and a half years from March, 1991 up to September, 1995 was ¥1,18,80,000/- equivalent to about Rs.80,000/- per month as per Ex.PW1/21. However, the learned Tribunal did not consider the said amount on the ground that the income in foreign currency cannot be the basis of the income of the deceased in India. The learned Tribunal took into consideration the Income Tax Return of the deceased for the year 1991-92 according to which the monthly salary of the deceased was Rs.13,333.33. The learned Tribunal took the average monthly income of the deceased to be

Rs.13,333.33. 1/3rd was deducted towards personal expenses of the deceased and the dependency of the appellants was taken to be Rs.8,500/-. Multiplier of 10 was applied by the learned Tribunal to compute the loss of dependency at Rs.10,20,000/-. Rs.15,000/- has been awarded by the learned Tribunal towards loss of estate and consortium and the total compensation computed is Rs.10,35,000/-.

9. The only ground urged by the appellant at the hearing of this appeal is that the amount awarded by the learned Tribunal is excessive as the deceased was not employed at the time of the accident.

10. The respondents/claimants have filed cross-objections seeking enhancement of the award amount on the ground that the deceased was earning Rs.1,00,000/- per month in his last employment with Taj Group of Hotels which should be taken into consideration for computation of compensation on the basis of his earning capacity. The second ground of challenge is that the personal expenses of the deceased be reduced from 1/3rd to 1/4th as the deceased has left behind five dependents. The third ground raised by the respondents is that the deceased was aged 48 years at the time of the accident and the appropriate multiplier is 15 whereas the learned Tribunal has applied the multiplier of

10. The fourth ground of challenge is that no compensation has been awarded towards loss of love and affection.

11. The qualification, occupation and income of the deceased has been proved by PW-1. The deceased passed Indian School Certificate Examination from St. Columbia's High School, Alexandra Place, New Delhi in 1967 (Ex.PW1/4). The deceased graduated from Delhi University in 1972 (Ex.PW1/2). The deceased thereafter completed three year Diploma course in Hotel Management, Catering and Nutrition from Institute of Hotel Management, Catering and Nutrition, Pusa, New Delhi in 1975 (Ex.PW1/3 and Ex.PW1/5). The deceased joined Oberoi Group of Hotels in July, 1975 (Ex.PW1/9 and Ex.PW1/10). The deceased participated in Food and Beverage Training Programme in September, 1983 at the Sheraton Centre Hotel, New York (Ex.PW1/11 and Ex.PW1/12). The deceased also participated in Food Preparation and Service Management Course, New Delhi in May, 1990 (Ex.PW1/7). The deceased also completed six week advanced Culinary Arts Programme at Hyde Park, New York from Culinary Institute of America in September, 1983 (Ex.PW1/8). The deceased was awarded certificate of commendation by Maurya Sheraton Hotel and Towers in 1990 (Ex.PW1/14 and Ex.PW1/15). The deceased was awarded gold medal in a Restaurant Contest in

World Food Festival in Japan in 1988 (Ex.PW1/16). The deceased was also a member of Cookery and Food Association, London (Ex.PW1/18). The deceased was also elected as Master Craftsman Craft Guild of Chefs (Ex.PW1/13 and Ex.PW1/19). The deceased worked with Maurya Sheraton Hotels and Towers from 1977 to 1990 and held various positions and the last position was that of Chef for three years. The employer highly appreciated his services as per certificate – Ex.PW1/23. The deceased participated in Indian Food Promotion held at Royal Orchid Sheraton Hotel & Towers in Bangkok in September, 1987 (Ex.PW1/24 and Ex.PW1/25). The deceased also successfully participated in World Restaurant Show on Hot and Cold Food Display at Sopparo, Japan in 1998. Maurya Sheraton Hotel recorded the appreciation for the services of the deceased vide certificates - Ex.PW1/27 to Ex.PW1/30. The deceased was awarded a gold medal at the Restaurant Contest at International Culinary Art Contest at Sapporo, Japan in 1998. The deceased was selected for outstanding performance award for the year 1987-88 by Maurya Sheraton in October, 1988 and he was also given a performance award for the same (Ex.PW1/31). The deceased achieved the standing of Gourmet Society lecturer for Indian Cuisine from Culinary Institute of America (Ex.PW1/32). The deceased also

wrote many articles for the magazines and his work was also reported in newspapers.

12. The deceased worked with Taj Group of Hotels as Executive Chef for four and a half years from March, 1991 to September, 1995 drawing a salary of ¥1,18,80,000/- after tax deductions, which is equivalent to approximately to Rs.80,000/- per month (Ex.PW1/21). The employment agreement dated 15th September, 1990 between the deceased and Taj Group of Hotels is Ex.PW1/22. As per certificate – Ex.PW1/20, the employer was very satisfied with his work.

13. The learned counsel for the respondents/claimants submit that the deceased was earning ¥1,18,80,000/- after deduction of tax which is equivalent to Rs.80,000/- per month up to September, 1995 and he left the employment on his own to start his catering business and he would have earned more than the said amount. It is further submitted that even if the deceased would not have succeeded in his private business, he could have always gone back to work as Executive Chef with any five star hotel and would have earned more than his last drawn salary. The learned counsel, therefore, submits that the earning capacity of the deceased be taken to be Rs.80,000/- per month.

14. The learned counsel for the claimants refers and relies

upon the judgments of **Vijayalakshmi vs. Raju Shekaran, 1995 ACJ 405, DTC vs. Sudharshan Yadam, 1995 ACJ 393, Hazi Zenullah Khan vs. Nagar Mahapalika, 1994 ACJ 993, Susamma Thomas vs. Narayana Kurup, 1992 ACJ 1034, A.C. Gupta vs. New India Insurance Co., 2002 ACJ 312** and **United India Insurance Co. Ltd. vs. Patricia Mahajan, (2002) 6 SCC 281** in support of the preposition that the earning capacity of the deceased should be taken on the basis of his potential to earn.

15. The earning potential of the deceased can be determined by taking into consideration his qualifications, positions held by him and the last drawn salary. The presumption as to the earning capacity of the deceased can be drawn from the aforesaid facts. The guidance for drawing such presumption can be taken from Section 114 of the Indian Evidence Act which is reproduced hereunder:-

> "**Section 114. Court may presume existence of certain facts**.- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case"

16. In a recent article in GT Weekenter, Gomantak Times of 14th June, 2009, it has been reported that the Executive Chef at Taj,

Mumbai is paid more than the General Manager. It is further reported that there is shortage of Chefs world over and the job of Chef is highly paid. In another article titled Rude Food By Vir Sanghvi in Hindustan Times Sunday Magazine of 19th July, 2009, it is reported that top Chefs receive huge salaries. It is further reported that the restaurants Bukhara and Dum Pukht in Maurya Sheraton have been rated as world's best restaurants which is not an accident or fluke but it emerges from the care and attention paid to the Chefs. It is further reported that the best restaurants in metropolitan cities such as Smokehouse Grill, Olive, Aunes and Caperberry are all Chef-based restaurants. It is reported that ITC believes that great Chefs are artists and must be treated as such. Great Chefs not only master traditional recipes but invent new dishes.

17. The deceased was a very highly qualified Chef. Considering the qualifications of the deceased, namely, Graduation in Science from Delhi University, Diploma in Hotel Management, Catering and Nutrition from Institute of Hotel Management, Pusa, New Delhi and from Hotel Management School of Oberoi Hotels, the professional experience of the deceased initially with Hotel Oberoi Inter-Continental, then with Maurya Sheraton Hotel and Towers from 1977 to 1990 and thereafter as Executive Chef with

Taj Group of Hotels from 1991 to October, 1995, certificates and awards won by the deceased in India and abroad and also considering that the Executive Chef is one of the highest paid officials in five star Hotels, it can be presumed that the deceased had the capacity to earn at least Rs.20,000/-. The learned Tribunal did not consider these facts at all to determine the earning capacity of the deceased. The learned Tribunal further erred in taking into consideration the income of the deceased in 1991 to be the basis for determining the income of the deceased in 1998.

18. The income of the deceased at the time of the accident is, therefore, taken to be Rs.20,000/-. Since the deceased did not have a stable income at the time of the death, future prospects are not taken into consideration. The deceased has left behind five legal representatives and, therefore, following the judgment of the Apex Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the personal expenses of the deceased are taken to be 1/4th and the dependency of the representatives/claimants is taken to be 3/4th. The deceased was aged 48 years at the time of the accident and the appropriate multiplier is 13. The loss of dependency of the claimants is, therefore, computed to be Rs.23,40,000/-[(Rs.20,000 - Rs.5,000) x 12 x 13]. The learned Tribunal has awarded Rs.20,000/- towards

loss of consortium and loss of estate. No amount is awarded towards loss of love and affection. Rs.10,000/- is awarded towards loss of love and affection and Rs.5,000/- is awarded towards funeral expenses. The total compensation of the claimants is taken to be Rs.23,75,000/- (Rs.23,40,000 + Rs.20,000 + Rs.10,000 + Rs.5,000).

19. The appeal is dismissed. The cross objections are allowed and the award amount is enhanced from Rs.10,35,000/- to Rs.23,75,000/-. The learned Tribunal has awarded interest @9% per annum which is not disturbed on the original award amount of Rs.10,35,000/-. However, on the enhanced amount, the rate of interest shall be @7.5% from the date of filing of the petition till payment. The shares of the claimants on the enhanced award amount shall be in the same proportion as per the original award amount. The appellant is directed to deposit the award amount with the learned Tribunal within 30 days. Upon such deposit being made, the learned Tribunal is directed to release 10% of the award amount to each of the claimants. The remaining amount is directed to be kept in fixed deposit for a period of five years on which periodical interest be paid to the claimants but no loan or withdrawal be permitted without the permission of the learned Tribunal.

J.R. MIDHA, J

AUGUST 13, 2009
aj

62

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 693/2007

SUNIL KUMAR & ANR. ..... Appellants
Through : Mr. Prag Chawla, Adv.

versus

VIJAY PATHAK & ORS. ..... Respondents
Through : Mr. Gurmit Singh Hans and
Mr. Gurvinder Singh Talwar,
Advs for R-1 & 2.
Ms. Manjusha Wadhwa, Adv.
for R-3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 25.02.2009

1. The appellant has challenged the interim award passed by the Learned Tribunal whereby the Learned Tribunal passed the interim award of Rs.50,000/- against the appellants.

2. Appellant No.1 is the driver, appellant No.2 is the owner and respondent No.3 is the insurer of Tata 407 bearing registration No.DL-1LG-3008 which met with an accident with scooter No.UP-1644 resulting in the death of Rani Pathak on 22nd August, 2006.

3. The deceased was survived by her husband and minor son

who filed the claim petition under Section 166 and 140 of the Motor Vehicles Act before the Learned Tribunal. In the MAC.APP. No.693/2007 Page 1 of 9 petition, Oriental Insurance Company Limited was impleaded as respondent No.3. It was mentioned in para B of the petition that the offending vehicle was owned by appellant No.2 and insured with respondent No.3 - Oriental Insurance Company. Copy of the registration certificate was filed along with the petition as Annexure P-6 and the copy of the insurance cover note was filed along with the petition as Annexure P-7.

4. Respondent No.3 filed the written statement before the Learned Tribunal on 21st February, 2007 in which they raised the preliminary objection that the policy was issued to appellant No.2 in respect of Tata 407 on the basis of the engine number and chassis number and appellant has not informed the registration number of the vehicle and, therefore, appellant was put to the strict proof that the offending vehicle bears the same engine number and the chassis number.

5. The Learned Tribunal passed the interim award against the appellants only and exonerated respondent No.3 on the ground

that it had not been established that the offending vehicle was duly insured with respondent No.3. The learned Tribunal held that evidence was required to establish that the

offending vehicle was insured with respondent No.3.

6. The appellants have challenged the impugned order on the ground that the offending vehicle was duly insured by respondent No.3 and, therefore, the interim award should be passed against the respondent No.3. It is submitted that the vehicle was new at the time of issuance of policy and, therefore, only engine and chassis number were mentioned in the policy but in the renewal policy, the registration number of the vehicle has been mentioned. The renewal policy was filed along with the appeal and, therefore, there is no doubt that offending vehicle was duly insured with respondent No.3.

7. I have perused the trial court record. The registration cover of the offending vehicle was filed by the claimants along with the claim petition before the Learned Tribunal as Annexure P–6 and it was also specifically referred in para B of the petition and, therefore, there was no doubt whatsoever about the registration

of the offending vehicle.

8. Before filing of the written statement before the Learned Tribunal, the insurance company was duty bound to verify the copy of the registration cover, copy whereof was duly supplied to respondent No.3 but no efforts were made by respondent No.3 to verify the same and vague written

statement was filed before the Learned Tribunal raising doubt on the valid insurance of the offending vehicle which led the Learned Tribunal to pass the impugned order.

9. The Karnataka High Court in the case of **Ramakrishan Reddy vs. Manager, H.M.T. Ltd 2003 ACJ 105** held that the insurer should verify the insurance and other particulars and assist the Court in computing the compensation to the claimants who are not litigants by choice but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self. It was further held that if the insurer were to file 'play it safe' written statements without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and claimants are put to misery and unjustly kept away from the direly

needed compensation. It was held as under: -

> " 19.1 The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and insurer of the vehicle involved, fail to pay the compensation. The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle, and they solely depend upon the police for these particulars. The insurer should, therefore, verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the

> claim or not, and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies who refuse to recognize their statutory obligations to third parties, under the insurance policies issued to the insured."

10. On 6th February, 2009, this Court summoned the Divisional Manager of Oriental Insurance Company Limited, on whose

instructions the written statement was filed, in pursuance to which he appeared on 18th February, 2009 along with the claim file which revealed that respondent No.3 had also appointed an investigator who verified the copy of the registration certificate of the offending vehicle and submitted a report on 9th August, 2007 in which it was confirmed that the registration certificate was genuine and the offending vehicle was duly insured by the policy in question.

11. Respondent No.3 is guilty of taking an incorrect stand before the learned Tribunal as well as before this Court and, MAC.APP. No.693/2007 Page 5 of 9

therefore, I was initially inclined to impose very heavy cost on respondent No.3. However, on the suggestion of this Court, respondent No.3 agreed to settle the entire claim of the claimants and, therefore, I am not imposing any cost on respondent No.3 as the delay in payment of interim award would be compensated by early settlement of the entire claim of the claimants. The Court, therefore, requested Mr. V.P. Choudhary, Senior Advocate to mediate in this matter between the claimants and the insurance

company to compute the fair and just amount of compensation payable to the claimants. Mr. Choudhary had few sessions with both the parties and he also examined the documents of the claimants in support of their claim.

12. Mr. Choudhary has suggested that Rs.6,50,000/- along with interest @7.5% from the date of filing of the claim petition before the learned Tribunal up to the date of payment would be just compensation payable to the claimants.

13. The claimants, namely, Mr. Vijay Pathak and Master Himanshu Pathak are present in Court and they are agreeable to the said compensation.

14. Mr. R.K. Nagpal, Divisional Manager, along with Mr. M.S. Rawat, Administrative Officer, Oriental Insurance Co. Ltd. are

present in Court and the compensation suggested by Mr. Choudhary is also acceptable to Oriental Insurance Co. Ltd. It is submitted by the Insurance Company that they have not yet verified the driving licence of the driver of the offending vehicle and they need about 10 days to verify the same, but they are prepared to pay the claim amount to the claimants in full and final

settlement of all the claims of the claimants and if the driving licence is not found to be in order upon verification, the Insurance Company would claim recovery rights against the owner.

15. I am satisfied that the aforesaid settlement between the parties is lawful and bonafide.

16. In view of the aforesaid settlement, the impugned order dated 11th July, 2007 is set aside and award of Rs.6,50,000/- along with interest @7.5% from the date of filing of the petition, i.e., 14th September, 2006 till the date of payment is passed in favour of respondents No.1 and 2 and against respondent No.3. Respondent No.3 shall deposit the said amount with the learned Tribunal within 30 days.

17. The share of the claimants shall be 50% each in the award amount, i.e., Mr. Vijay Pathak shall have 50% share and Master Himanshu Pathak shall have 50% share. The

share of Master Himanshu Pathak shall be kept in a fixed deposit in a nationalized bank till he attains majority. However, the interest on the said FDR shall be payable to his father, Mr. Vijay Pathak on monthly/quarterly basis, as the case may be. With

respect to the 50% share of Mr. Vijay Pathak, half of the amount be kept in a fixed deposit for a period of 5 years on which he would be entitled to interest and remaining half share of the 50% be paid to him. The insurance company is directed to make the payment accordingly.

18. The insurance company shall deposit the cheques with the learned Tribunal who shall release the same after endorsement in terms of the directions made hereinabove. The entire claim of the claimants before the learned Tribunal shall stand satisfied upon the payment in terms of the aforesaid settlement.

19. With respect to the issue of driving licence, the Insurance company shall carry out the necessary verification within 15 days. The report of the Insurance company be brought in Court on the next date of hearing for examination of the issue relating to the driving licence.

20. This Court records the appreciation for Mr. V.P. Choudhary, Senior Advocate who has spared his valuable time to resolve this case on the suggestion of the Court.

21. Renotify on 16th March, 2009 at 2:30 pm for report of the insurance company on the issue of driving licence.

22. Copy of this order be given 'Dasti' to counsel for the parties under signatures of Court Master.

J.R. MIDHA, J

FEBRUARY 25, 2009
mk/aj/s.pal

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC. APP. No.596/2008

Date of Decision: 26th March, 2009

NATIONAL INSURANCE CO. LTD. ...Appellant.

Through: Mr. Pradeep Gaur and Mr. Amit Kumar Pandey, Advocates for the appellant.

Versus

KANIKA SABOO & ORS. ...Respondents.

Through: Mr. Arvind Dhingra and Mr.Pardeep Kumar, Advocates for the Respondent.

CORAM:-
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may Be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

ORDER (Oral)

CMs No.17078/2008 and 1303/2009 in MAC APP.No.596/2008

1. The appellant has challenged the award of the learned Tribunal whereby the compensation has been awarded to claimants/respondents. The challenge is on the ground that the driver was not holding a valid driving licence at the time of the accident and, therefore, the Insurance Company is not liable.

2. The appeal is pending for hearing. By an interlocutory order, this Court has directed the Insurance Company to deposit

the entire award amount along with interest with the learned Tribunal.

3. The appellant has raised an issue of deduction of TDS from the interest amount.

4. It is submitted by the learned counsel for the appellant that in all cases of deposit of interest amount exceeding Rs.50,000/- with learned Tribunal or with this Court in pursuance to an interim order in pending appeals, the appellant is deducting the TDS and is depositing the remaining amount with the learned Tribunal or with this Court, as the case may be, and the TDS certificate is issued in the name of the learned Tribunal /Registrar General of this Court.

5. The learned counsel for the claimants/respondents No.1 to 9 has strongly opposed the deduction of the TDS on the ground that the deposit of interest with the Court under an interim order is not payment of income by way of interest within the meaning of Section 194A of the Income-Tax Act, 1961 and, therefore, Section 194A would not apply.

6. Section 194A (1) and (3) (ix) of the Income-Tax Act are reproduced hereunder:-

> **"SECTION 194A. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident**

any income by way of interest other than income by way of "Interest on securities", shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force."

"SECTION 194A (3) - The provisions of sub-section (1) shall not apply –
(ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees."

7. Section 194A (1) has three ingredients which are as under:-

(i) There is payment of income by way of interest exceeding Rs.50,000/-.

(ii) The person making payment is responsible to make the payment.

(iii) The person receiving the payment is entitled to receive payment of income by way of interest.

8. None of the essential requirements of the Section 194A of the Income-Tax Act are satisfied in the present case. The reasons are as under:-

(i) The deposit of interest amount under the order of

this Court pending hearing/decision of the appeal is not payment of income.

(ii) The appellant is not responsible to make payment of income by way of interest to the Court.

(iii) The Court is not entitled to any payment of income by way of interest from the Appellant.

9. Section 194A(3)(ix) is attracted only to cases where Section 194A(1) is applicable. Since Section 194A(1) is not applicable to the present case, Section 194A(3)(ix) shall also not be attracted.

10. There is another aspect of this matter. The purpose of deduction of TDS is to deduct the tax at source is to identify the income of interest above Rs.50,000/- and also deduct tax at source and a TDS certificate is issued to the recipient to enable him to either take adjustment of TDS against his tax liability or to seek refund if his income is below taxable limit. However, the Court is not entitled to receive any payment of income from the appellant and, therefore, if the TDS certificate is issued to the Court, the Court can neither adjust the TDS certificate nor seek the refund against any head. Rather there is no head for deposit of TDS in favour of the Court. At a later stage, if the appeal is

decided in favour of the appellant and the money is to be refunded back to the appellant, the appellant cannot even get the refund of the TDS amount. On the other hand, if the appeal is dismissed and the interest amount is released to the claimants, they also cannot get the credit of the TDS. This clearly demonstrates that deduction of TDS by the appellant in the name of the Court and issuance of TDS certificate to MAC

the Court is not within the ambit of Section 194A of the Income-Tax Act, 1961. It is well settled that if two interpretations are possible then the one interpretation which leads to achieving the object of the provision should be applied.

11. Since the issue involved in this case pertains to the Income-tax, it was considered appropriate to seek the opinion of the Standing Counsel of the Income-Tax Department. This court, therefore, requested the learned Standing Counsel, Mr. Sanjiv Sabharwal to assist this Court.

12. Mr. Sabharwal, the learned Standing Counsel of the Income-Tax Department has been apprised of the controversy and he is present in the Court. Mr. Sabharwal submits that the appellant is liable to deduct the TDS under Section 194A of the Income-Tax Act in cases where the payment of any income by way of interest exceeding Rs.50,000/- is made directly by the appellant to the claimant. The learned Standing Counsel submits that the deposit of interest amount with the Court under the interim direction of the Court pending final determination of the rights in appeal is only a inchoate right and, therefore, Section 194A does not apply and no TDS can be deducted. The learned Standing Counsel refers and relies upon the judgment of Apex Court in the case of Commissioner of Income Tax, West Bengal

Development Trust, 161 (ITR) 425 (1986). The learned Standing Counsel further submits that upon the final decision of the appeal, if the appeal is allowed, then appellant would be entitled to refund of the deposit amount. On the other hand if the appeal is dismissed, the interest amount lying deposited with the Court, would be treated as income and the claimants will be liable to pay the Income-Tax and, therefore, in order to protect the interest of the Revenue Department, the Court may send notice to the Income-Tax Department before release of the amount and may call for Income Tax Clearance Certificate or deposit of the Income Tax by the claimant with the Income-Tax Department.

13. I agree with the opinion of the learned Standing Counsel of the Income-Tax Department. I, therefore, hold that Section 194A of the Income-Tax Act does not apply to the cases of deposit of interest amount exceeding Rs.50,000/- by the appellant under interim direction of the Court pending the final determination of the appeal.

J.R. MIDHA, J.

MARCH 26, 2009
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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 116/1998

Date of reserve: 3rd February, 2009
Date of decision: 31st March , 2009

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SUMITRA & ORS ..... Appellants
Through : Mr. Amarjit Singh, Adv.

versus

UP STATE ROADWAYS TPT.CORPN.
& ANR ..... Respondents
Through : Ms. Garima Prashad and
Ms. Suchita Sharma, Advs.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT

1. The appellants have challenged the award of the learned Tribunal whereby the compensation of Rs.1,58,500/- was awarded to them. The appellants seek enhancement of the award amount.

2. On 25th December, 1993 at about 7:45 pm, the deceased was going on his two wheeler scooter No.DL-5S-7028. His employee, Lakhan Ram Chaurasia was sitting on the pillion. When the scooter reached in front of Ram Singh Hospital near Krishna Nagar, a U.P.

Roadways Bus hit him from behind due to which the deceased was thrown on one side and his employee, Lakhan Ram was thrown on the other side. The deceased succumbed to the injuries suffered in the accident.

3. The appellant was a young boy aged 22 years. At the time of his death, he was unmarried and was survived by his mother and four sisters out of which two sisters were unmarried at the time of the accident. The father of the deceased had already pre-deceased him and, therefore, the entire burden of maintaining the family was on the deceased.

4. In the claim petition before the Tribunal, it was contended that the deceased was the sole proprietor of M/s Arora Tent and Electric Store and he was earning Rs.6,000/- per month.

5. The learned Tribunal computed the compensation payable to the appellants by taking the income of the deceased at Rs.1,500/- in parity with an unskilled labourer out of which Rs.500/- was deducted as the amount that the deceased would have spent on himself and the dependency of the appellants was computed at Rs.1,000/- per month on which after applying the multiplier of 12, the loss of dependency was assessed at Rs.1,44,000/-. Rs.10,000/- has been awarded to appellant No.1 for love and affection, Rs.2,000/- for funeral expenses and Rs.2,500/- for loss of estate.

6. The appellant has challenged the impugned award of the Learned Tribunal mainly on three grounds. The first ground of challenge is that the deceased was running the business of tent and electric store and was earning Rs.6,000/- per month but the Learned Tribunal erred in drawing the parity with an unskilled labourer and taking his income as Rs.1,500/- per month. The second ground is that the Second Schedule of the Motor Vehicles Act provides the multiplier of 17 taking the age of the deceased but the Learned Tribunal erred in applying the lower multiplier of 12. The third ground is that very low amount of Rs.10,000/- has been awarded for love and affection and Rs.2,500/- for loss of estate .

7. With respect to the income of the deceased, the appellants examined three witnesses. Appellant No.1 appeared as PW-3 and deposed that the deceased was running the business of tent and electric shop and was earning Rs.6,000/- per month. She further deposed that the deceased used to give whole amount of Rs.6,000/- to her for household expenses after keeping his pocket money and other expenses of the shop. She further deposed that the deceased was her only son and the only earning hand in the family and her two daughters were married whereas the other two daughters were of marriageable age. She stated that her husband

had already expired and the shop was closed down after the death of the deceased. The appellant further stated that the business of tent and electric store was earlier being carried on by her husband and after his death, the deceased was doing the business. The witness stated in cross-examination that the deceased was having three employees out of which one employee was sitting on the pillion of the scooter along with the deceased. In cross-examination, she admitted that the deceased was not paying Income Tax. She further admitted that she has not filed any document or any account books of the shop to prove the income of the deceased.

8. The appellants produced two more witnesses to corroborate the statement of PW-3. PW-1, Mr. Sanjay Chadha is running the business of photography opposite to the shop of the deceased. He stated that the income of the deceased was Rs.6,000/- to Rs.6,500/-. PW-1 took the photographs of the U.P. Roadways Bus and the scooter. He also exhibited the photographs of the deceased as Ex.PW1/K1 to PW1/K3. PW-2, Vijay Arora is the neighbour of the appellants. He also corroborated the statement of the deceased with respect to the income of Rs.6,000/-.

9. I have perused the evidence on record. Ex.PW1/K1 to Ex.PW1/K3 are the photographs of the deceased who was smart

and handsome young boy. He was matriculate. It has been proved by PW-1, PW-2 and PW-3 that the deceased was running the business of tent and electric store in the name of 'M/s. Arora Tent and Electric Store' in Lal Quarter Market, Krishna Nagar, East Delhi which is a prominent market in the East Delhi. The business was earlier being carried on by the father of the deceased and after his death, the deceased carried on the business. It has also come in evidence that the business was closed down after the death of the deceased as there was no other male member in the family of the deceased. The deceased was survived by his mother who is not educated and four sisters, out of which two were unmarried at the time of his death. It has also come in evidence that the deceased had three employees out of which one was sitting on the pillion with him at the time of his death.

10. Appellant No.1 has categorically stated in the witness box that the deceased used to give her Rs.6,000/- for household expenses after keeping his pocket money and other expenses. PW – 2 as well as PW-3 also corroborated the statement of PW-1 with respect to the business as well the income of the deceased. It is well known that the profit is very high in the business of tent and electric store. The learned Tribunal, therefore, clearly erred in drawing the parity of young, educated, smart and handsome boy

running his own business with an unskilled labourer. I find the analogy to be irrational and unjustified.

11. The Learned counsel for the respondent submits that the deceased was not paying Income Tax and, therefore, the income of the deceased cannot be taken to be more than the maximum non-taxable limit. On the other hand, the counsel for the appellant submits that non-payment of Income Tax may invite violation of Income Tax law but cannot be a ground for denying just compensation to the appellant. The learned counsel for the appellant refers to and relies upon the Division Bench Judgment of the Allahabad High Court in **Oriental Insurance Company Limited vs. Bhupender Kaur, 2004 ACJ 1130**. In that case, the deceased was not paying the Income Tax. However, the Court held that it would not nullify the statement of the wife of the deceased that she was actually receiving Rs.10,000/- to Rs.12,000/- per month from the deceased. The ratio of the above case is applicable to the present case. The learned counsel for the respondent refers to and relies upon the judgment in the case of **Bijoy Kumar Duggal Vs. Bidhyadhar Dutta – 2006 (3) SCC** where the appeal for enhancement was dismissed in the absence of documentary proof of the income.

12. Considering the evidence on record, I am of the view that there is sufficient evidence on record that the deceased was carrying on the business of tent and electric store in the prominent market of East Delhi, he had three employees and he used to give Rs.6,000/- to his mother for household expenses. I, therefore, take the income of the deceased to be Rs.3,000/- at the time of his death. This income would have increased with the passage of time and computing future prospects as per the principle laid down by the Apex Court in the case of **Sarla Dixit vs. Balwant Yadav, 1996 SCC 1274**, the average income of the deceased would have been Rs.3,000/- + Rs.6,000/- divided by 2 = Rs.4,500/-. Out of this, the appellant would have spent 1/3rd on himself and the loss of dependency on the appellants is computed at Rs.3,000/- per month.

13. The Learned Tribunal has applied the multiplier of 12 without giving any reason. The deceased was aged 22 years and his mother was aged 44 years at the time of the death of the deceased. Taking the age of the mother, Second Schedule provides the multiplier of 15. The counsel for the appellant refers to and relies upon the judgment of the Apex Court in the case of **U.P. State Road Transport Corporation & Ors. Vs. Trilok**

Chandra & Ors. – (1996) 4 SCC 362 where the Apex Court has held that maximum multiplier could go up to 18 and Second Schedule be used as a guide in determination of compensation. Learned counsel for the appellant also refer to the Division Bench Judgment of this Court in the case of **Rattan Lal Mehta vs. Rajinder Kapoor, 1996 ACJ 372** where it has been held that it is open to Courts/Tribunals to apply table in the Second Schedule in respect of accidents which occurred prior to the 1994 amendment of the Motor Vehicle Act. The learned counsel for the respondent refers to and relies upon the judgments in the cases of **Managing Director, TNSTC vs. K.I.Bindu, [(2005) 8 SCC 473], U.P. State Road Transport Corporation vs. Krishna Bala, [(2006) 6 SCC 249]** and **New India Assurance Co. Ltd. vs. Kalpana, [(2007) 3 SCC 538]** in which multiplier lower than one provided in the Second Schedule of Motor Vehicles Act, 1988 has been adopted to compute the compensation.

14. In the present case, the Second Schedule provides the multiplier of 15 according to the age of the mother of the deceased. However, considering the recent judgments of the Hon'ble Supreme Court where the lower multiplier than the one provided in the Second Schedule has been applied, I adopt the

multiplier of 13. The total loss of dependency is assessed at Rs.4,68,000/- (Rs.3,000 x 12 x 13).

15. The counsel for the appellant also refers to and relies upon the judgment in the case of **Virender Singh vs. Anand Prakash, 2007 Rajdhani law Reporter 532** in which it was held that the claimants are entitled to just compensation which can be higher than the amount claimed. There is no dispute on this preposition of law.

16. With respect to the compensation for love and affection and loss of estate, the learned Tribunal has awarded Rs.10,000/- and Rs.2,500/- respectively. No reason or justification has been given. In judgment of the case of **United India Insurance Co. Ltd. vs. Sulochana, III (2007) ACC 50 (DB),** Madras High Court has awarded Rs.25,000/- each to mother and daughter towards love and affection and Rs.50,000/- towards loss of consortium. I award Rs.10,000/- towards love and affection to appellant No.1 and Rs.5,000/- towards love and affection to each of appellants No. 2 to 5.

17. The appellant is entitled to compensation of Rs.5,00,000/- (Rs.4,68,000/- + Rs.10,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.5,000/- + Rs.2,000/-).

18. The appeal is allowed and the compensation is enhanced from Rs.1,58,500/- to Rs.5,00,000/-. The learned Tribunal had awarded interest @12% from the date of filing of the petition till after one month of the award and 14% thereafter. I do not disturb the interest on Rs.1,58,000/- as it is in the conformity with bank interest rates at that time. However, on the enhanced amount now awarded, the respondent shall be entitled to the interest @7.5% from the date of filing of the petition, that is, 27th January, 1994 till the date of payment. The share of the appellants in the enhanced amount shall be as under:-

Appellant No.1	:	80%
Appellants No.2 to 5	:	5% each.

19. The enhanced amount along with interest be deposited by the respondent with the learned Tribunal within 30 days. The learned Tribunal is directed to release 30% of the share of appellant No.1 to her and remaining 70% of the amount be kept in a fixed deposit for a period of ten years on which no loan, advance or withdrawal be permitted without the prior permission of the learned Tribunal but the periodical interest be permitted be released to the appellants. With respect to shares of appellants No.2 to 5, 50% of their share be released to them and remaining 50% of their share be kept in fixed deposit for a period of five years

with restriction on withdrawal, loan and advance as above in the case of appellant No.1. The learned Tribunal shall first release the cheques towards the amount to be kept in fixed deposits and the remaining amount be released only after the original fixed deposit receipts with proper endorsements are shown to the learned Tribunal and the copies of FDRs duly attested by the Bank are placed on record of the learned Tribunal.

J.R. MIDHA, J.

MARCH 31, 2009
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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 23rd November, 2009

+ MAC.APP.No.135/2008

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through : Mr. Pankaj Seth, Adv.

versus

GANGA DEVI & ORS. ..... Respondents
Through : Mr. Navneet Goyal, Adv.
for R-1 and 2.

+ MAC.APP. 359/2008

GANGA DEVI & ORS. ..... Appellants
Through : Mr. Navneet Goyal, Adv.

versus

NEW INDIA ASSURANCE CO.LTD. &ORS. ..... Respondents
Through : Mr. Pankaj Seth, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. New India Assurance Co. Ltd. (hereinafter referred to as 'Insurance Company') and Smt. Ganga Devi and Radhey Lal Meena

(hereinafter referred to as 'claimants') have challenged the award of the learned Tribunal whereby compensation of Rs.9,60,352/- has been awarded to the claimants.

2. MAC.APP.No.135/2008 is the appeal by the Insurance Company whereas MAC.APP.No.359/2008 is the appeal by the claimants.

MAC.APP.No.135/2008

1. The accident dated 12th August, 2003 resulted in the death of Dr. Brij Mohan. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.

2. The deceased was driving motocycle bearing No.DL-3S-AE-2673 while going from Mehrauli side to Safdarjung Hospital. When the deceased reached Aurobindo Market near Yusuf Sarai Market, he was hit by blueline bus bearing No.DL-1PB-5261 due to which the deceased fell down and suffered fatal injuries. The driver of the bus parked the bus at the nearby bus stand and ran away from the spot.

3. The deceased was 24 years old at the time of the accident. The deceased had completed his MBBS and was doing one year internship with Guru Teg Bahadur Medical College, Shahadara and was getting stipend of Rs.5,000/- per month. The deceased had also cleared the UPSC examination for the post of medical officer and was scheduled to be appointed as medical officer after completing the internship.

4. The claimants produced four witnesses before the learned

Tribunal. PW-1 - Head Constable, Atar Singh produced the record of FIR No.383/03 dated 12th August, 2003 and proved the copy of the FIR as Ex.PW1/A.

5. PW-2 – J.P. Rathi, Senior Assistant, University College of Medical Science, GTB Hospital proved that the deceased took admission in MBBS course in 1997. The witness produced the complete record of the deceased which was proved as Ex.PW2/A. PW-2 further deposed that the deceased was doing internship at the time of the accident after completing 4½ years course. PW-2 further deposed that after completing MBBS course, preference is given to internal candidates for being absorbed as Junior Resident Doctors at a salary of Rs.18,000/- to Rs.20,000/- per month. The deceased was getting a stipend of Rs.5,000/- per month at the time of the accident.

6. The father of the deceased appeared as PW-3 and deposed about the educational and professional qualifications of the deceased. PW-3 also tendered the certified copies of the chargesheet, FIR, site plan, recovery memo, application for mechanical inspection and inspection reports of the bus as well as motorcycle, registration certificate of the bus and post-mortem report as Ex.P2 to Ex.P11. The copies of the degrees, marksheets and certificates in respect of educational and professional qualifications were proved as P-12 to P-19.

7. Bhagwat Singh Verma, eye-witness of the accident appeared as PW-4 and deposed that the deceased was riding on his motorcycle while going from Mehrauli to Safdarjung when the offending bus hit the motorcycle of the deceased from left side due to which the motorcyclist fell down on the road. PW-4 further deposed that the bus driver parked the bus on the nearby bus stand and ran away from there. The deceased was wearing helmet at the time of the accident and he became unconscious. PW-4 put the deceased in the TSR with the help of passerby and sent him to the hospital. PW-4 was called by the police where his statement was recorded. In cross-examination, PW-4 deposed that he saw the accident from a distance of about 20 to 25 paces and at that time, the motorcycle was at a speed of 30 to 35 kms/hr. whereas the bus was at a speed of about 50 kms/hr. PW-4 further stated that the accident did not occur due to the fault of the motorcycle.

8. The only ground urged by the Insurance Company at the time of hearing of this appeal is that the negligence of the driver of the offending bus has not been proved before the learned Tribunal.

9. There is sufficient evidence on record to prove the rash and negligence of the driver of the offending bus. From the statement of the eye-witness – PW-4 and the site plan – Ex.P-4, it has been established that the motorcyclist was driving at a speed of 30 to 35

kms/hr. and the bus came from behind at the speed of 50 kms/hr. and hit the deceased from behind. The FIR – Ex.P-3 has been registered against the driver of the bus and after investigation, the police chargesheeted the driver vide chargesheet – Ex.P-2. Though the learned Tribunal has given the finding of rash and negligence of driver but the learned Tribunal has not rightly appreciated the evidence on record which as stated above, is sufficient to arrive at the finding of rash and negligence of the driver of the offending bus.

10. There is no merit in the contention of learned counsel for the Insurance Company that the rash and negligence of the driver of the bus has not been sufficiently proved. Though the Insurance Company has not taken over the defence of the driver and owner of the offending vehicle under Section 170 of the Motor Vehicles Act and is not entitled to contest the case on merits, notwithstanding the bar of Section 170, the contention of the Insurance Company has been examined on merits.

11. For all the aforesaid reasons, MAC.APP.No.135/2008 is dismissed.

MAC.APP.No.359/2008

1. The claimants have filed MAC.APP.No.359/2008 for enhancement of the compensation.

2. The deceased was aged 24 years at the time of the accident and

was getting the stipend of Rs.5,000/- per month and was supposed to join the Hospital at a salary of Rs.18,000 to Rs.20,000/- per month. However, the learned Tribunal held the evidence to insufficient to prove the income and took the minimum wages of a graduate worker as Rs.3,543/- per month, added 50% towards inflation and rise in price index, deducted 1/3rd towards personal expenses and applied the multiplier of 11 to compute the loss of dependency at Rs.9,35,352/-. Rs.15,000/- has been awarded towards loss of consortium and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.9,60,352/-.

3. The learned counsel for the appellant has urged the following grounds at the time of hearing of this appeal-

(i) The income of the deceased be taken to be Rs.20,000/- per month.

(ii) The multiplier be enhanced from 11 to 13 considering the age of the mother of the deceased to be 47 years.

(iii) The compensation be awarded for loss of love and affection and loss of estate.

(iv) The interest be enhanced from 7% per annum to 7.5% per annum.

4. The learned counsel for Insurance Company submits that the deceased was unmarried and, therefore, the personal expenses of the

deceased be reduced from 1/3rd to 1/2. The learned counsel for Insurance Company further submits that the deceased was unmarried and, therefore, the compensation on account of loss of consortium could not have been granted to the claimants.

5. The income of the deceased has been sufficiently proved by the evidence of PW-2 who deposed that the deceased was getting a stipend of Rs.5,000/- per month and was supposed to join as Junior Resident Doctor with the hospital at a salary of Rs.18,000 to Rs.20,000/- per month. The complete record of the deceased was exhibited by PW-2 as Ex.PW2/A. PW-3 also proved the degrees, marksheet and certificates of the deceased as Ex.PW-12 to Ex.PW-19 and deposed that the deceased was getting a stipend of Rs.5,000/- per month and was scheduled to join as a doctor at a salary of at least Rs.16,000/- per month which was to be revised as Rs.25,000/- per month.

6. The finding of the learned Tribunal that the income of the deceased has not been sufficiently proved, is not based on evidence on record and is, therefore, set aside. The income of the deceased at the time of the accident is taken to be Rs.18,000/- per month. The deceased was aged 24 years and, therefore, 50% is added towards future prospects of the deceased following the judgment of Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport**

Corporation, 2009 (6) Scale 129. The deceased was unmarried and, therefore, the deduction towards personal expenses is reduced from 1/3rd to 1/2. The parents of the deceased were aged 47 years and 50 years at the time of the accident. The appropriate multiplier according to the age of the mother as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) is 13. The multiplier is, therefore, enhanced from 11 to 13.

7. The deceased was unmarried, therefore, no compensation can be awarded for loss of consortium. The compensation of Rs.10,000/- awarded by the learned Tribunal towards loss of consortium is set aside. The learned Tribunal has not awarded any compensation for loss of love and affection and loss of estate. Rs.10,000/- is awarded towards loss of love and affection and Rs.10,000/- towards loss of estate.

8. The learned Tribunal has awarded interest @7% per annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 7% per annum to 7.5% per annum.

9. Taking the income of the deceased to be Rs.18,000/- per month, adding 50% towards future prospects, deducting 50% towards personal expenses, applying the multiplier of 13, adding Rs.10,000/-

towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses, the total compensation is computed to be Rs.21,36,000/- [(Rs.18,000 + 50% of Rs.18,000) x 1/2 x 12 x 13)] + Rs.10,000 + Rs.10,000 + Rs.10,000)].

10. The appeal is allowed and the award amount is enhanced from Rs.9,60,352/- to Rs.21,36,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

11. The enhanced award amount along with interest be deposited by Insurance Company with UCO Bank A/c Ganga Devi through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

12. The order with respect to disbursement of the award amount shall be passed after examining the claimants who are directed to remain present before this Court on 22nd December, 2009.

13. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

J.R. MIDHA, J

NOVEMBER 23, 2009/aj

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.422/2009

Date of Decision: 23rd February, 2010

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SOBAT SINGH ..... Appellant
Through: Mr. Kishan Nautiyal, Advocate.

versus

RAMESH CHANDRA GUPTA & ANR. ..... Respondents
Through: Mr. Atul Nanda, Ms. Rameeza, Mr.Sumeer and Ms. Sugandha, Advocates for Bajaj Allianz General Insurance Co. Ltd. with Mr. Sanjay Gupta, Manager.
Mr. Atul Nanda, Ms. Rameeza, Mr.Sumeer and Ms. Sugandha, Advocates for ICICI Lombard General Insurance Co. Ltd. with Mr.Gaurab Gaba, Manager.
Ms. Manjusha Wadhwa and Ms. Harsh Lata, Advocates for Oriental Insurance Company Limited.
Ms. Anjali Bansal, Advocate for Tata AIG General Insurance Co. Ltd., Bharti AXA General Insurance Co. Ltd. and Future Generali India Insurance Co. Ltd.
Mr. Sunil Kapoor and Mr. Anuraj Sharma, Advocates for HDFC ERGO General Insurance Co. Ltd.
Mr. S.L. Gupta, Advocate for National Insurance Company with Mr. Santosh K. Sood, Manager, DRO-I and Mr. N. Wadhwan, Asst. Manager, DRO-II.
Ms. Adarsh Sabharwal, Adv. for Raheja QBE General Insurance Co. Ltd.
Ms. Shantha Devi Raman with Mr. Amit Maihen, Advocates for IFFCO Tokyo General Insurance Co. Ltd.
Mr.Pankaj Seth, Advocate for Reliance General Insurance Co. Ltd., Universal Sompo

General Insurance co. Ltd. and Royal Sundaram Alliance Insurance Co.Ltd.
Mr. Kanwal Choudahary, Adv. for R-2.
Mr. K.L. Nandwani, Advocate for United Insurance Company with Mr. Harish Choudhary, Deputy Manager and Mr. Sanjeev Negi, Admn. Officer.
Mr. O.P. Mannie, Amicus Curiae.
Ms. Suman Bagga, Advocate for Cholamandalam MS General Insurance Co. Ltd.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. In terms of order dated 27th January, 2010, the following Claims Tribunals have submitted their interim reports:-

(i) Report of MACT (Central)

The MACT (Central) has submitted the interim report and has sought two months time to furnish the complete information. In the interim report, it is stated that 2092 cheques are pending with the Nazir out of which 2020 cheques have lapsed. The table containing the details of 242 cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have

given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The recovery has been effected by attachment of bank accounts of the Insurance companies in six cases. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688** with respect to the cost of Rs.5000/- have not been followed.

(ii) <u>Report of MACT (South)</u>

The MACT (South) has submitted the interim report and has sought one month time to furnish the complete information. It is stated that 536 cheques were deposited in last one year, out of which 426 cheques have been released and 110 cheques are pending out of which 73 cheques have lapsed. The table containing the details of 461 cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(iii) Report of MACT (East)

The MACT (East) has reported that 99 cheques are pending with Claims Tribunal out of which 48 cheques have lapsed. Out of the 202 cases in the last one year, the notice of deposit has not been given to the claimants either by the Insurance Company or by the Claims Tribunal. The amount of interest under Order XXI Rule 1 during the last one year has been computed. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(iv) Report of MACT (South-West), Dwarka

The MACT (South-West) has submitted the interim report and has sought 15 days time to furnish the complete information. In the interim report, it is stated that 65 cheques are pending for release and 42 cheques have lapsed during the last year. The table containing the details of the cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has calculated the period and amount of interest. The directions of this Court in the

case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(v) Report of MACT (North)

The MACT (North) has submitted the interim report and has sought one month time to furnish the complete information. It is stated that 132 cheques are lying deposited for being released and 16 cheques have lapsed during the last year. The table containing the details of 331 cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The recovery has been effected by attachment of bank accounts of the Insurance companies in four cases. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) with respect to the cost of Rs.5,000/- have not been followed.

(vi) Report of MACT (West)

The MACT (West) has submitted the interim report and has sought one month time to furnish the complete information. In the interim report, it is stated that 353

cheques are lying deposited out of which 153 cheques have lapsed. The table containing the details of the cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(vii) <u>Report of MACT (South-East)</u>

The MACT (South-East) has submitted its report in which it is stated that 441 cheques were deposited out of which 404 cheques have been released and 15 cheques have lapsed. The table containing the details of the cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has calculated the period and amount of interest. With respect to the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra), it is reported that cost of Rs.5000/- has been imposed in three cases.

(viii) Report of MACT (North-East)

The MACT (North-East) has submitted the report in which it is stated that 40 cheques are lying deposited for being released and 115 cheques have lapsed during the last year. The table containing the details of 284 cases has been furnished but in all the cases neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(ix) Report of MACT (North-West)

The MACT (North-West) has submitted its report and stated that cheques are pending for being released in 56 cases and 70 cheques have lapsed during last year. The table containing the details of 135 cases has been furnished but no information regarding notice of deposit of the award amount to the claimants has been given. The Claims Tribunal has not calculated the period and amount of interest. The directions of this Court in the case of **New**

India Assurance Company Ltd. Vs. Kashmiri Lal (supra) have not been followed.

(x) <u>Report of MACT (Outer)</u>

The MACT (Outer) has submitted its report and stated that 55 cheques are pending for release and 33 cheques have lapsed during the last year. The table containing the details of the cases has been furnished but in all the cases, neither the Insurance Companies nor the Claims Tribunal have given notice of deposit of the award amount to the claimants. The Claims Tribunal has not calculated the period and amount of interest. The recovery has been effected by attachment of bank accounts of the Insurance companies in two cases. The directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) have not been followed.

(xi) <u>Report of ASJ, Fast Track Court (West)</u>

The ASJ, Fast Track Court (West) has submitted its report and stated that 4 cheques are pending for being released and no cheque has lapsed. The table containing the details of 20 cases has been furnished but in all the cases neither the Insurance Company nor the Court have given notice of deposit of the award amount to the

claimants. The Court has calculated the period and amount of interest.

2. The Presiding Officer, MACT-New Delhi has not cared to submit the report. A reminder be sent through the Registrar (Appellate) of this Court. The reports of MACT (East), MACT (South-West), MACT (South East) and ASJ, Fast Track Court are complete. All other Claims Tribunals are directed to submit their complete report through Registrar (Appellate) within four weeks. The Claims Tribunals shall also calculate the interest up to the date of release of the award amount to the claimant. The Additional District Judges/Additional Sessions Judges handling MACT cases are also directed to send their report in compliance of the order dated 27th January, 2010 within four weeks. The Reports of the Claims Tribunals be submitted before the Registrar (Appellate) and be placed on record along with the comments of the Registrar (Vigilance).

All the Claims Tribunals are also directed to prepare the separate lists for each Insurance company and the interest amount of each Insurance company shall be calculated. The list be prepared separately for two periods first from 1st January, 2009 to 12th July, 2009 and the second from the period 13th July, 2009 till

date. The aforesaid lists be submitted before this Court within four weeks through Registrar (Appellate) of this Court.

3. Ms. Anjali Bansal, Advocate has filed the status reports on behalf of Tata AIG General Insurance Co. Ltd. and Bharti AXA General Insurance Co. Ltd., which are taken on record. Tata AIG General Insurance Co. Ltd. has filed the data of all the awards passed in the last one year. It is stated that in all the cases, the claimants have been informed about the deposit of the award amount simultaneously upon the deposit. Bharti AXA General Insurance has stated in their affidavit that no award has been passed against them in NCR of Delhi in the last one year but the company shall follow Order XXI Rule 1 of the Code of Civil Procedure. With respect to the Future Generali Insurance Co. Ltd., Ms. Bansal submits that one award was passed in respect of which cheque deposited with the Claims Tribunal was cleared within one month and the Company agrees to follow Order XXI Rule 1 of the Code of Civil Procedure.

4. Mr. Sunil Kapoor, counsel for HDFC ERGO General Insurance Co. Ltd. submits that the Company had been intimating the Counsel for the claimants while depositing the award amount. Mr. Kapoor submits that the Company agrees to follow Order XXI

Rule 1 of the Code of Civil Procedure while depositing the award amount in future. Mr. Kapoor further submits that the aforesaid Insurance company is prepared to give notice of deposit to the claimants' counsel, which should be taken as sufficient compliance of the provisions of Order XXI Rule 1 of the Code of Civil Procedure.

5. Mr. S.L. Gupta on behalf of National Insurance Co. Ltd. submits that he has instructions to state that National Insurance Co. Ltd. shall comply with the provisions of Order XXI Rule 1 of the Code of Civil Procedure while depositing the award amount in future. However, with respect to the affidavit to be filed in terms of order dated 27th January, 2010, Mr. Gupta seeks two weeks time to file the affidavit before this Court. Mr. Gupta submits that National Insurance Co. Ltd. is prepared to serve the notice of deposit on the claimant's counsel under Order XXI Rule 1 of the Code of Civil Procedure. Mr. Gupta further points out that officers of National Insurance Co. Ltd. are present in Court and the statement has been made on their instructions.

6. Ms. Adarsh Sabharwal, Advocate submits that Raheja QBE General Insurance Co. Ltd. is a new company and no award has been passed against the said company till now. The counsel

further submits that she has filed an affidavit in this regard in which it has been stated that the company shall comply with the directions of this Court with regard to Order XXI Rule 1 of the Code of Civil Procedure.

7. Mr. Pankaj Seth, Advocate for Universal Sompo General Insurance Co. Ltd. submits that no award has been passed against this company till now. However, the Company agrees to comply with the Order XXI Rule 1 of the Code of Civil Procedure in future. Mr. Pankaj Seth, Advocate also appears on behalf of Reliance General Insurance Co. Ltd. and Royal Sundaram Alliance Insurance Co. Ltd. and submits that the relevant data and affidavit in compliance of order dated 27th January, 2010 shall be filed within four weeks and the said Insurance companies shall serve the notice of deposit on the claimants through Court and shall pay interest up to date of deposit.

8. Mr. Atul Nanda, learned counsel for ICICI Lombard General Insurance Co. Ltd. and Bajaj Allianz General Insurance Co. Ltd., vehemently argued that Order XXI Rule 1 of the Code of Civil Procedure is not at all applicable to motor accident claim cases. The counsel further submitted that although the Hon'ble Supreme Court in the case of **Rajasthan State Corporation,**

Jaipur Vs. Poonam Pahwa, 1997, ACJ 1049 has held that the principle of Order XXI Rule 1 of the Code of Civil Procedure is applicable to the motor accident cases but Order XXI Rule 1 of the Code of Civil Procedure is not applicable to the motor accident claim cases and, therefore, the Insurance companies cannot be compelled to comply with Order XXI Rule 1 of the Code of the Civil Procedure. Mr. Nanda then referred to Section 168(3) of the Motor Vehicles Act, 1988 to contend that the award amount has to be deposited with the Claims Tribunals in terms of their award but since the Claims Tribunals have not passed any direction requiring the notice to be given, the Insurance companies are not liable to give any notice of deposit. Mr. Nanda further submitted that the default, if at all, is on the part of the Claims Tribunals in not issuing the notice of deposit and not on the part of the Insurance companies. Upon the specific query of the Court as to his stand in view of the Rules 31 and 32 of Delhi Motor Accidents Claims Tribunal Rules, 2008, which provides that the Claims Tribunals shall have all the powers of the Civil Court for execution of the decree, Mr. Nanda conceded that Order XXI Rule 1 of the Code of Civil Procedure is applicable to motor accident claim cases w.e.f. 13th July, 2009 when Delhi Motor Accidents Claims

Tribunal Rules, 2008 came into force. Mr. Nanda finally admitted that he has instructions from his clients to make a statement that in future, his clients shall give notice of deposit to the claimants in order to streamline the system. With respect to the compliance of the order dated 27th January, 2010, Mr. Nanda sought clarification of para 18 of the Order dated 27th January, 2010 where reference has been made to the directions dated 9th July, 1997. This Court has referred to the directions dated 9th December, 2005 in para 18 of the order dated 27th January, 2010 but inadvertently the date has been mentioned as 9th July, 1997 instead of 9th December, 2005 in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688**. The date of 9th July, 1997 in para 18 of the order dated 27th January, 2010 is corrected and be read as 9th December, 2005.

9. Mr. Kanwal Choudhary on behalf of New India Insurance Company submits that the relevant data and affidavit in compliance of order dated 27th January, 2010 shall be filed within four weeks. Mr. Choudhary further submits that New India Assurance Co. Ltd. shall serve the notice on the claimants through Court and shall pay interest up to the date of deposit.

10. Ms. Manjusha Wadhwa on behalf of Oriental Insurance Co.

Ltd. submits that the relevant data and affidavit in compliance of order dated 27th January, 2010 shall be filed within four weeks.

11. Mr. K.L. Nandwani, Advocate appears on behalf of United Insurance Co. Ltd. and submits that United India Insurance Co. Ltd. agrees to give notice of deposit to the claimants through Court. Mr. Harish Arora, Deputy Manager and Mr. Sanjeev Negi, Administrative Officer submits that the affidavit/ data shall be filed positively within four weeks.

12. Ms. Suman Bagga, Advocate on behalf of Cholamandalam MS General Insurance Co. Ltd., submits that the relevant data and affidavit in compliance of order dated 27th January,2010 shall be filed within four weeks and the Insurance Company shall serve the notice on the claimants through Court and shall pay interest up to date of deposit.

13. Ms. Shantha Devi Raman Advocate on behalf of IFFCO Tokyo General Insurance Co. Ltd., submits that the relevant data and affidavit in compliance of order dated 27th January, 2010 shall be filed within four weeks and the Insurance Company shall serve the notice on the claimants through Court and shall pay interest up to date of deposit.

14. All the Insurance companies are directed to file their status

report and affidavit in terms of order dated 27th January, 2010 within a period of four weeks with advance copy to the learned Amicus Curiae. The General Managers of all the Insurance companies shall remain present in Court on the next date of hearing.

15. Section 168(3) of the Motor Vehicles Act, 1988 empowers the Claims Tribunals to direct the deposit of the award amount in such manner as it may direct. Section 168(3) is reproduced hereunder:-

> **"Section 168 Award of the Claims Tribunal. –**
>
> (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

16. The Hon'ble Supreme Court in the case of **Rajasthan State Corporation, Jaipur Vs. Poonam Pahwa** (Supra), has clearly held that Order XXI Rule 1 of the Code of Civil Procedure is applicable to Motor Accident Claims. Delhi Motor Accidents Claims Tribunal Rules, 2008 came into force on 13th July, 2009. Rule 31 provides that the Claims Tribunals shall have all the powers of the Civil Court in execution of a decree under Code of Civil Procedure as if the award was a decree passed by a Civil Court. Rule 32 further

provides that the Claims Tribunal shall exercise all the powers of the Civil Court. Rules 31 and 32 are reproduced hereunder:-

> **"31. Enforcement of award of the Claims Tribunal** -
>
> Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure,1908(5 of 1908), as if the award where a decree for the payment of money passed by such court in a civil suit.
>
> **32. Vesting of powers of Civil Court in the Claims Tribunal –**
>
> Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908)."

17. From the interim reports of the Claims Tribunals, it is clear that there has been gross miscarriage of justice and grave injustice has been caused to the claimants as no notice of deposit has been given to the claimants either by the Insurance Companies or by the Claims Tribunals. The record of the Nazirs have not been maintained according to the date of the award. The Nazirs enter the cheque deposited in such a manner that the deposit cannot be easily traced out. If a person has to check whether the payment has been deposited in respect of award

passed on 10th January, 2009, he has to check all the entries from 10th January, 2009 upto date. As a result, a large number of cheques deposited with the Claims Tribunals have lapsed. In respect of one of the Claims Tribunal, 2020 cheques deposited with it have expired. No action has been taken by the Claims Tribunals in respect of lapsed cheques. The Claims Tribunals have also not followed the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688**. It appears that the Claims Tribunals, Insurance companies and claimants were all ignorant of the correct legal position, but ignorance of law is no defence. The victims of the road accidents suffer first, because of the road accident, then, due to delay in the inquiry and thirdly, even after passing the award, no notice of deposit is given by the Insurance company or by the Claims Tribunal. The non-compliance of law by the Insurance companies has caused irreparable damage, harassment, delay and injustice to the claimants. There is not even an iota of remorse by any Insurance company. Though the Insurance companies have now agreed to comply with Order XXI Rule 1 of the Code of Civil Procedure in future but they insist to pay interest only till date of deposit and not till notice of deposit, meaning thereby, that even

while admitting applicability of Order XXI rule 1 of the Code of Civil Procedure, the Insurance companies are still not willing to gracefully comply with the law. Be that as it may, in view of undertaking of the Insurance companies to comply with Order XXI Rule 1 of the Code of Civil Procedure read with Rules 31 and 32 of the Delhi Motor Accident Claims Tribunal Rules, 2008, the following interim directions are issued to the Claims Tribunals for streamlining the system:-

(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with

the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award

amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

(v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688**.

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

a) Date of award
b) Case number
c) Title of the case
d) Award amount
e) Date of deposit of the award amount
f) Date of notice of deposit by the depositor.
g) Date of notice of deposit by the Tribunal.
h) Amount of interest upto date of notice of deposit.
i) Whether award amount and complete interest deposited.
j) Balance outstanding interest.
k) Remarks (Action taken to recover the balance interest)

(vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India**

Assurance Company Ltd. Vs. Kashmiri Lal (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

(viii) In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.

(ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days.

18. The final order/directions shall be passed on the next date of hearing after examining the final Status Reports of the Claims Tribunals and the Insurance companies in terms of the order dated 27th January, 2010 and after hearing all the parties. The Claims Tribunals and all the Insurance Companies shall submit their response to the aforesaid interim directions and further suggestions, which shall be considered on the next date of hearing. In the meantime, the Claims Tribunals shall implement Rules 31 and 32 of Delhi Motor Accident Claims Tribunal Rules, 2008 read with Order XXI Rule 1 of the Code of Civil Procedure, the directions passed by this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra) and the aforesaid interim

directions. The action taken report in this regard be filed by all the Claims Tribunals through the Registrar (Appellate) before the next date of hearing.

19. List for hearing on 6th April, 2010 at 12.30 pm.

20. Copy of this order be sent to the Registrar (Vigilance), Registrar (Appellate) and the Principal District and Sessions Judge for communication to and compliance by all concerned.

21. Copy of this order be given Dasti to counsels for the parties, learned Amicus Curiae as well as to the nominated counsels of all the Insurance Companies.

22. Copy of the order dated 27th January, 2010 and this order be also sent to Mr. S. Sundar, Chairman of the Expert Committee constituted by the Ministry of Road Transport and Highways, Government of India.

J.R. MIDHA, J

FEBRUARY 23, 2010
HL

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 3rd February, 2010

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+ MAC.APP. 512-13/2006

D.T.C. & ORS. ..... Appellants
Through : Mr. Jyotindra Kumar, Adv.

versus

MEENA KUMARI & ANR. ..... Respondents
Through : Mr. S.S. Tomar, Adv. for R-4 and 5.
Ms. Rajdipa Behura, amicus curiae.

+ MAC.APP. 570-71/2006

RAMKISHAN & ANR ..... Appellants
Through : Mr. S.S. Tomar, Adv.

versus

D.T.C. & ORS. ..... Respondents
Through : Mr. Jyotindra Kumar, Adv.
for R-1 and 2.
Ms. Rajdipa Behura, amicus curiae

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. The appellants have challenged award of the learned Tribunal whereby compensation of Rs.1,50,000/- has been

awarded to the claimants. The appellant in MAC.App.No.512-513 of 2006 has challenged the award on the ground that appellant is not liable to pay any compensation to the claimants whereas the appellants in MAC.APP.No.570-571 of 2006 are seeking enhancement of the award amount.

2. The accident dated 29th January, 1992 arising out of a bomb blast in DTC Bus bearing No.DEP 8264 at Mall Road Bus stand resulted in the death of Sansar Pal.

3. The deceased was survived by his widow, one minor son, one minor daughter and parents. The deceased was aged about 28 years at the time of the accident and was doing a private job earning Rs.2,000/- per month. The learned Tribunal took the minimum wages of Rs.1,300/-, deducted 1/3rd towards the personal expenses and applied the multiplier of 18 to compute the loss of dependency at Rs.1,87,200/- rounded off to Rs.1,80,000/-. The learned Tribunal awarded Rs. 5,000/- towards funeral expenses, Rs.5,000/- towards loss of love and affection and Rs.10,000/- towards pain and suffering. The total compensation was computed to be Rs.2,00,000/- out of which Rs.50,000/- paid by Lt. Governor of Delhi as ex-gratia payment was deducted and Rs.1,50,000/- was awarded to the claimants.

4. The learned counsel for appellant in MAC.APP.No.512-

513/2006 has urged, at the time of hearing of this appeal, that the accident did not occur due to rash and negligent driving of the driver of the bus and, therefore, DTC is not liable to pay any compensation to the claimants.

5. The learned counsel for the appellant in MAC.APP.No.570-71/2006 has urged the following grounds at the time of hearing of this appeal:-

(i) The income of the deceased be taken to be Rs.2,000/- per month and 50% be added towards future prospects.

(ii) In the alternative, increase in minimum wages due to inflation and rise in price index be taken into consideration.

(iii) The deduction towards the personal expenses of the deceased be reduced from 1/3rd to 1/4th .

(iv) The compensation be awarded for loss of consortium.

(v) The compensation be awarded for loss of estate.

(vi) The share of the parents in the award amount be enhanced.

(vii) The deduction of ex-gratia amount of Rs.50,000/- paid by Lt. Governor of Delhi to the claimants be set aside.

(viii) The rate of interest be enhanced from 5.5% per

annum to 7.5% per annum.

6. Considering the question of law with respect to the compensation payable in case of bomb blast, this Court appointed Ms. Rajdipa Behura, as amicus curiae to assist this Court.

7. The first question that arises for consideration in these appeals are whether DTC is liable to pay compensation for death of Sansar Pal arising out of a bomb blast in a DTC bus.

8. The law with respect to aforesaid question is well settled by the following judgments:

(i) Shivaji Dayanu Patil vs. Vatschala Uttam More, 1991 ACJ 777

There was a collision between a petrol tanker and a truck due to which the petrol tanker went off the road and fell at a distance of about 20 feet from the highway leading to leakage of petrol which collected nearby. Later an explosion took place in the petrol tanker resulting in fire. Number of persons who assembled near the petrol tanker sustained burn injuries and few of them succumbed to the injuries. The victims filed the claim petitions which were dismissed by the Claims Tribunal on the ground that the explosion and the fire had no connection with

the accident, and was altogether an independent accident. The appeal was allowed by the learned Single Judge of the High Court holding that the explosion was a direct consequence of the accident. The Division Bench of the High Court affirmed the findings of the learned Single Judge against which the matter came up before the Hon'ble Supreme Court.

The Hon'ble Supreme Court dismissed the Special Leave Petition holding that the explosion and fire resulting in injuries and death was due to the accident arising out of the use of the motor vehicle. The findings of the Hon'ble Supreme Court are reproduced hereunder:-

> "25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some break-down or mechanical defect. Relying on the abovementioned decisions, the Appellate Bench of the High Court had held that the expression "use of a motor vehicle" in Section 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No. 4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High

Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck."

"35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

"36. Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle

> the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No. MKL 7461."

(ii) Rita Devi vs. New India Assurance Co. Ltd., 2000 ACJ 801 (SC)

The deceased was employed to drive an auto rickshaw for ferrying passengers on hire. On the fateful day, the auto rickshaw was parked in the rickshaw stand at Dimapur when some unknown passengers engaged the deceased for journey. As to what happened on that day is not known. It was only on the next day that the police was able to recover the body of the deceased but the auto rickshaw in question was never traced out. The owner of the auto rickshaw claimed compensation from the

insurance company for the loss of auto rickshaw. The heirs of the deceased claimed compensation for the death of the driver on the ground that the death occurred on account of accident arising out of use of the motor vehicle. The Apex Court held that the heirs of the deceased would be entitled to compensation. The question as to whether the case of murder would be covered was also gone into. Paras 9 and 10 are relevant and are quoted below:-

> "9. A conjoint reading of the above two Sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words 'death due to accident arising out of the use of motor vehicle'.
>
> 10. The question, therefore, is can a murder be an accident in any given case ? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the

> victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The differences between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killings is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

(iii) Samir Chanda v. Managing Director, Assam State Trans, Corporation 1998 ACJ 1351 (SC),

The Apex Court upheld the claim for compensation in respect of injuries were suffered by the claimant due to bomb blast inside the vehicle relying on the decision given in **Shivaji Dayanu Patil's case** (supra).

(iv) Kaushnuma Begum vs. New India Assurance Co. Ltd., 2001 ACJ 428

The Hon'ble Supreme Court held that the principle of strict liability propounded in **Rylands vs. Fletcher 1861 All E R 1** was applicable in claims for compensation made in respect of motor accidents. The relevant findings of the Hon'ble Supreme Court are reproduced hereunder:-

> "12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use,

should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands vs. Fletcher (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

“19. Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands vs. Fletcher can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents.

20. "No Fault Liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permits that compensation paid under 'no fault liability' can

be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."

(v) National Insurance Co. Ltd. vs. Shiv Dutt Sharma, 2004 ACJ 2049 (J&K)

Two sets of claims were made in this case; one relating to the accident in a bus and the other relating to an accident where bullets of terrorists killed the passengers of a bus. The Jammu and Kashmir High Court held as under:-

"43. On the basis of the judicial pronouncements and the material which has come on the record, it is concluded:

(i) That a passenger travelling in a bus when he suffers from an injury on account of bomb explosion or on account of any other activity including terrorist activity, he would be well within his rights to claim compensation. This view is spelt out from the decision given by the Supreme Court of India in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC) and the latter decisions noticed above;

(ii) That even if a person is not actually in the vehicle and is standing outside and suffers an injury, even in that case Supreme Court of India has allowed compensation in Shivaji Dayanu Patil v. Vatschala Uttam More, 1991 ACJ 777 (SC). Therefore, merely because some of the victims

were taken out of the bus and thereafter shot dead, would not make any difference;

(iii) That the material which has come on the record justified the grant of the compensation and the quantum thereof is accordingly sustained."

9. Following the aforesaid judgments, it is held that the accident in question arose out of the use of the motor vehicle and, therefore, the claimants are entitled to compensation under Section 163-A of the Motor Vehicle Act.

10. The deceased was aged 28 years at the time of accident and has left behind five legal representatives. According to the judgment of Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129,** the appropriate deduction where the deceased has left behind 4 to 6 legal representatives is 1/4th. The personal expenses of the deceased are therefore reduced from 1/3rd to 1/4th.

11. The learned counsel for the claimants has submitted that the deceased was working as a supervisor with Ravi & Co. drawing a salary of Rs.2,000/- which should be taken into consideration for computation of compensation. Learned counsel for the claimants further submits that the future prospects should also be taken into consideration. The widow of the deceased appeared in the witness box as PW-1 and deposed

that her husband was engaged in a private job earning Rs.2,000/- per month. The salary certificate dated 12th January, 1993 issued by Ravi & Co. was placed on record in which it was certified that the deceased was working with the said company since 18th December, 1990 till his death on 29th January, 1992 as Supervisor at a salary of Rs.2,000/- per month. The father of the deceased also appeared in the witness box as R3W1 and deposed that the deceased was earning Rs.2,000/- per month. R3W1 proved the documents relating to the educational and technical qualifications and the first job of the deceased as Ex.R3W1/1 to Ex.R3W1/8. Though the salary certificate has not been formally proved by examining the employer, it has been corroborated by the statements of PW-1 and R3W1 and, therefore, the income of the deceased at the time of the accident is taken to be Rs.2,000/- per month. The learned Tribunal has erred in not taking the aforesaid documents into consideration. Since the income of the deceased has been proved, the principle of minimum wages has no application to the present case. The claim of future prospects is rejected as it has not been proved that the job of the deceased was of permanent nature.

12. There is another aspect of the matter. Even if the minimum wages are taken into consideration, the amount after taking the

inflation and rise in price index would be almost equal to the salary of the deceased. The learned Tribunal has taken the minimum wages as Rs.1,300/-. However, the increase in minimum wages has not been taken into consideration. It is well settled by the catena of judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134 and UPSRTC vs. Munni Devi, MAC.APP.No.310/2007** decided on 28.07.2008 that the Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate. This Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects and the income should be computed by taking the average of minimum wages and its double. Following the aforesaid judgments, the minimum wages after taking the increase due to inflation and rise in price index would be Rs.1,950/- per month [(Rs.1,300 + Rs.2,600)/2]. The income of Rs.2,000/- per month of the deceased is, therefore, almost equal to the minimum wages.

13. The learned Tribunal has not awarded any compensation towards loss of consortium as well as loss of estate. Rs.10,000/- is awarded towards loss of consortium and Rs.10,000/- towards loss

of estate.

14. The learned Tribunal has applied multiplier of 18 according to the Second Schedule of Motor Vehicles Act. According to the judgment of Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation,** (supra), the appropriate multiplier at the age of 28 is 17. The multiplier is therefore reduced from 18 to 17. The claimants are entitled to total compensation of Rs.3,46,000/- [(2,000 x 3/4 x 12 x 17) + 5,000 + 5,000 + 10,000 + 10,000 + Rs.10,000].

15. The learned Tribunal has deducted Rs.50,000/- paid to Govt. of NCT of Delhi as ex-gratia amount. The said deduction is in conformity with the principles laid down by the Hon'ble Supreme Court in the case of **United India Insurance Co. Ltd. vs. Patricia Jean Mahajan AIR 2002 SC 2607** where the Hon'ble Supreme Court has held that the claimant is not entitled to claim compensation in respect of which the claimant has received the benefit as a consequence of the injuries sustained which otherwise he would not have been entitled to. The deduction of Rs.50,000/- by the Claims Tribunal is upheld. After deduction of Rs.50,000/- the claimants are held to be entitled to compensation of Rs.2,96,000/- (Rs.3,46,000 – Rs.50,000).

16. The learned Tribunal has awarded interest @ 5.5% per

annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. UP State Road Transport Corporation, III 2008 ACC (1) SC,** the rate of interest is enhanced from 5.5% per annum to 7.5% per annum from the date of filing of the petition till realization.

17. The learned counsel for DTC submits that amount of compensation awarded to the claimants is more than the amount claimed in the claim petition. It is well settled that the claimants are entitled to just compensation which can exceed the amount claimed. In **Nagappa vs. Gurudayal Singh, 2003 ACJ 12,** the Hon'ble Supreme Court held as under:-

> "21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award 'just' compensation which is reasonable on the basis of evidence produced on record."

18. The learned counsel for the DTC submits that the widow of the deceased shall be entitled to compensation for loss of dependency from the date of accident till the date of her remarriage. The learned counsel for DTC has referred to and relied upon the judgment of this Court in the case of **Nisha vs. Gyanvati, MAC.APP.794/2005** decided on 14th March, 2007 in which this Court has held that the widow shall be entitled to

compensation only till her remarriage. The learned counsel submits that the widow got remarried within three years of the accident and, therefore, would not be entitled to compensation thereafter.

19. The Jammu and Kashmir High Court and the Rajasthan High Court have held that the re-marriage of widow cannot deprive her of compensation payable for the death of her husband in the following cases:-

(i) In **Seema Malik vs. Union of India, 2005 ACJ 1389,** the Jammu and Kashmir High Court examined the judgments of various High Courts on this issue and held as under:-

> "5. Another issue which is required to be taken note of is with regard to the rights of a widow to claim maintenance even if she re-marries. The judicial opinion is to the effect that simply because a widow has remarried, is not to be made a ground for declining her compensation. In *Hariram v. Commissioner for Workmen's Compensation*, 1994 ACJ 1094 (MP), the view expressed was that the widow on remarriage cannot be deprived of her right of getting compensation. In the above case the argument put across was that as the widow had re-married, therefore, the entire amount be given to the father of the deceased. It was held that this legal proposition cannot be sustained. The reasoning given was that the inheritance never remains in abeyance and, therefore, rights of a widow are to be taken and recognised on the date when her husband dies. Therefore, she cannot be deprived of her right of getting compensation.

6. The Rajasthan High Court in the case reported as *Regal Sports v. Mohd. Siddique,* 1994 ACJ 294 (Rajasthan), held that the widow cannot be declined compensation on her remarriage. Amount awarded was Rs.66,420/-. This was reduced in appeal to Rs.50,000/-. What is sought to be pointed out is that the widow was held entitled to claim amount of compensation. In *Rajasthan State Road Transport Corporation v. Kiran Lata*, 1993 ACJ 130 (Rajasthan), the view expressed was that to deny compensation on the ground of possibility of remarriage of the widow would be enforcing a view which is against the public policy and would be violative of Section 23 of the *Contract Act*. It was accordingly observed that the question of possibility of remarriage would not come in the way at all and compensation is not to be based by taking into consideration the question of marriage or possibility of remarriage. In another decision of the Rajasthan High Court, reported as *Vimla Devi v. Chaman,* 1992 ACJ 1048 (Rajasthan), it was held that the denial of compensation is not to be on account of possibility of re-marriage of the widow of the deceased. Some other decisions dealing with this aspect of the matter are *Rajinder Kumar v. Soma Devi*, 2001 ACJ 307 (HP); *Chandan v. Kanwarlal*, 1989 ACJ 816 (Delhi); *Khairullah v. Anita* 1994 ACJ 1017 (AP); *Nankuram Sarajdin v. Member, M.A.C.T., Thane*, 1994 (2) TAC 346 and *Halki Bai v. New India Insurance Co. Ltd.,* 1999 ACJ 187(MP). Learned Judges in these cases have consistently held that remarriage of a widow would not disentitle her to claim compensation.

7. Another reason which re-enforces the above conclusion that on re-marriage of a widow the social stigma which stood imposed earlier is not completely washed of. Some negative

> factors continue to exist and are taken note of in the case of re-marriage of a widow. She may on re-marriage may not enjoy the same status and frame of mind. Re-adjustment when widow has an infant, creates other social problems and she has to provide some security to the child or children from the first husband. This factor has to be taken note of. As such a widow on re-marriage cannot be deprived of the compensation.
>
> 8. The mother of the minor had stated that the amount of compensation was required to be spent on educating and bringing up her minor son. According to her, that much amount which she would have got would have been spent on the upkeep of the minor. Her counsel has stated that whatever amount she becomes entitled to now be given to her son; so that this monetary relief be of some solace for the fatherly love which he was unable to enjoy. As the appeal has been preferred by the son and mother of the deceased, the awarded enhanced amount shall go to the son."

(ii) In **Vimla Devi vs. Chaman, I (1992) ACC 170,** the Rajasthan High Court held that public feeling requires that there shall not be any deduction on account of possibility of remarriage. The findings of the High Court are as under:-

> "4. Mr. Bhartiya has also cited before me the case of Makbool Ahmed v. Bhura Lal 1986 ACJ 219 (Rajasthan). My brother Vyas, J., was considering the question of remarriage and held that the compensation should be paid only upto the date of remarriage and for the parents the multiplier was considered as 15 years. This case does not help Mr. Bhartiya in the facts and circumstances of the case in any way. However, I will like to observe that the

Constitution of India guarantees equal treatment and particularly Article 15 of the Constitution read with preamble of the Constitution. Chapter IV of the Constitution directs the court and the Government to provide equality of opportunity, equality of status and to give special facilities and concession to the weaker class of the society, namely, the women. The days when the widow remarriage was prohibited have gone and after coming into force of the Hindu Marriage Act and Hindu Succession Act, the doctrine of limited case also lost its ground. Widow has a right to remarry and it is in the interest of the society that remarriage of the young lady should be encouraged and the court should not be an impediment because of the old traditional approach, where the power vested in the man and the females were considered as the second class members. For this purpose, Section 14 of the Hindu Succession Act, 1956 also provides the right of absolute ownership to a woman and I am of the view that to say that on account of the remarriage or possibility of remarriage deduction of compensation will be against the spirit of the Constitution and will put a check on the remarriage system provided under various legislations enacted by the Parliament and the State Assembly. I am in disagreement on this point that there should be any impediment or restriction, directly or indirectly, compelling a woman not to remarry. On the contrary, an incentive should be given for remarriage for the preservation of better society. After remarriage generally a woman does not get the same status and benefits of decent life as she used to get earlier. Public feeling requires that there shall not be any deduction on account of possibility of remarriage."

(iii) In **Bhanwar Lal vs. Munshi Ram, 1988 ACJ 283**, the Rajasthan High Court held that the widow remarriage is a matter of satisfaction for all concerned but other members of the family should not suffer on this account. The deductions may act as

impediment in the path of encouragement to widow remarriage. The relevant findings of the High Court are as under:-

> "7. ...In Hindu society remarriage of widow is still rare and considered to be a taboo even till today. Therefore, if a widow remarriage, it is a matter of satisfaction for all concerned but on this account, there is no reason why the other members of the family of deceased should suffer. The deductions may act impediment in path of encouragement to widow remarriage. Apart from this, the act is a piece of social legislation which has been enacted with a view to give benefit to the members of the family of the unfortunate victim who lost his life in a sad accident. I am, therefore, of considered opinion that it will not be appropriate and justified on any ground to deduct anything on account of remarriage of the widow of the deceased and to deny the benefit of the compensation to the aging parents of the deceased person."

20. I am in respectful agreement with the view of the Jammu & Kashmir High Court and the Rajasthan High Court and hold that the remarriage/possibility of the remarriage will not deprive a person from compensation for the death of his/her spouse. The learned counsel for claimants submit that the widow got re-married after about 3 years of the death of the deceased and, therefore, enhanced award amount be apportioned considering that the ex-gratia amount of Rs.50,000/- was received by widow alone and out of the amount awarded by learned Tribunal, the parents were given only Rs.12,500/- each and the remaining

amount was released to the children. It is noted that apart from the widow, the deceased has left behind two minor children and parents. The minor children continued to live with the widow even after her remarriage. No compensation has been awarded to the widow by the Claims Tribunal. However, out of the enhanced award amount, 10% of the compensation is reasonable to be given to the widow towards maintenance till her remarriage and for discharging her liability to maintain the children and the expenses incurred on that account. The remarriage of the widow has been considered by this Court and the shares of the children and parents are fixed considering the remarriage of the widow.

21. The appeal is allowed and the award amount is enhanced from Rs.1,50,000/- to Rs.2,96,000/- along with interest @ 7.5% per annum from the date of filing of petition up to the date of notice under Order 21 Rule 1 of the Code of Civil Procedure.

22. Considering the facts and circumstances of the case, it is directed that shares of the claimants in the enhanced award amount shall be as under:-

(i)	Share of widow of the deceased	:	10%
(ii)	Share of father of the deceased	:	15%
(iii)	Share of mother of the deceased	:	15%
(iv)	Shares of children	:	30% each.

23. The enhanced award amount along with interest be deposited by DTC with UCO Bank A/c Suparo Devi, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 60 days.

24. Upon the aforesaid deposit being made, UCO Bank is directed to release the share of the widow, Meena Kumari by transferring the same to her Saving Bank Account. With respect to the shares of the parents, 50% amount be released to them and the remaining 50% be kept in fixed deposit for one year with cumulative interest. The shares of the children be kept in fixed deposit for two years on which monthly interest be paid to them.

25. The interest on the aforesaid fixed deposits of the children shall be paid monthly by automatic credit of interest in the Savings Account of the respondents.

26. Withdrawal from the aforesaid account shall be permitted to the respondents after due verification and the Bank shall issue photo Identity Card to the respondents to facilitate identity.

27. No cheque book be issued to the respondents without the permission of this Court.

28. The Bank shall issue Fixed Deposit Pass Book instead of the FDR to the respondents and the maturity amount of the FDRs be

automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

29. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

30. Half yearly statement of account be filed by the Bank in this Court.

31. On the request of the respondents, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the respondents.

32. The respondents shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

33. List on 3rd May, 2010.

34. This Court appreciates the effective assistance rendered by Ms. Rajdipa Behura, Advocate appointed as amicus curiae by this Court in this matter.

35. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

36. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High

Court Branch under the signature of Court Master.

J.R. MIDHA, J

FEBRUARY 03, 2010
HL/aj

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.602/2009

Date of Decision: 5th February, 2010

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PRAKASH & ORS ..... Appellants

Through : Mr. F.K. Jha,
Mr. Rupesh Rayan and
Mr. R.N. Singh, Advs.

versus

ARUN KUMAR SAINI & ANR ..... Respondents

Through : Mr. Pankaj Seth, Adv.
for R-2.
Ms. Rajdipa Behura, amicus curiae.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT (Oral)

1. This appeal involves a important question as to whether an unborn child in womb should be considered at par with a minor child.

2. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.6,11,000/- has been

awarded to the appellants. The appellants seek enhancement of the award amount.

3. The accident dated 8th June, 2008 resulted in the death of Indu Devi. The deceased was survived by her husband and two children who filed the claim petition before the learned Tribunal.

4. The deceased was aged 25 years at the time of the accident. The deceased was a housewife. It was claimed that the deceased was also working as a housemaid and was earning Rs.5,500/- to Rs.6,000/- per month. However, in the absence of any documentary proof of occupation and income, the learned Tribunal took the deceased to be a housewife and the value of her services was taken as Rs.3,000/- per month and the multiplier of 16 was applied to compute the loss of dependency at Rs.5,76,000/-. Rs.10,000/- has been awarded for loss of consortium, Rs.20,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The total compensation awarded is Rs.6,11,000/-.

5. The learned counsel for the appellants submits that the deceased was pregnant with a foetus of about 24 to 28 weeks (about seven months) at the time of the accident. The learned counsel further submits that the appellants are entitled to compensation for the death of unborn child in the womb.

6. The learned Tribunal has held that though seven months pregnancy was recorded in the MLC but the post-mortem report –

Ex.P-1 (colly.) recorded that the uterus of the deceased did not contain any foetus. The learned Tribunal further held that no doctor has been examined to prove the pregnancy of the deceased and, therefore, no compensation was awarded for the death of the foetus. The finding of the learned Tribunal in this regard is as under:-

> "In the MLC of the deceased Indu Devi bearing no.99734, it has been mentioned that the deceased had a history of 7 months pregnancy but the postmortem report, which has been brought on record collectively as Ex.P-1 clearly states that the Uterus of the deceased did not contain any foetus or any placenta. If the deceased was operated upon the foetus, if any, was removed, then this fact has not been established on record by the petitioner. Even in the petition filed by the petitioner, it has nowhere been mentioned by the petitioner that the deceased Indu Devi was pregnant at the time of accident and carrying a 7 months old foetus and the affidavit of petitioner, which is Ex.PW2/A, carries only a bald testimony of the petitioner no.1 to this effect. No doctor has also been examined by the petitioner to prove this fact. However, the medical evidence in the form of the postmortem report, which has been placed on record, does not fortify the bald stand of the petitioner also. Any other treatment record, which would establish that the deceased was actually pregnant at the time of accident, the mentioning of pregnancy in the MLC is only a history of the patient i.e. the deceased, which was narrated by the person who was accompanying the deceased and in the instant case, it was most probably the petitioner Smt. Ratha. Since the medical evidence has not corroborated this fact, it is held that it was only the deceased Indu Devi, who sustained fatal injuries in the accident in question."

7. The learned counsel submits that the accident occurred on

8th June, 2008 and the MLC records the "uterus size up to umbilical weight approximately 24 to 28 weeks." It is submitted that the unborn child died in womb on 17th June, 2008 and was removed while the mother was alive. The mother expired on 14th August, 2008 and at that time, the foetus was not inside the womb of the deceased. However, no material was placed before the Claims Tribunal to prove that the foetus was removed before the death of the deceased.

8. The learned Tribunal did not conduct any inquiry under Section 168 of the Motor Vehicles Act to ascertain whether the dead foetus was removed from the body of the deceased before her death. This Court, therefore, conducted an inquiry under Section 168 of the Motor Vehicles Act to ascertain the truth. Vide order dated 21st December, 2009, the notice was issued to Sushruta Trauma Centre as well as LNJP Hospital to send the doctor who treated the deceased along with the complete medical record of the deceased.

9. On 27th January, 2010, Dr. Satender Kumar, CMO (Casualty Medical Officer), Sushruta Trauma Centre, Delhi and Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital, New Delhi appeared before this Court and their statements on oath were recorded before this Court. Dr. Satender Kumar deposed

that the deceased was brought to Sushruta Trauma Centre on 8th June, 2008 after a road accident. Dr. Satender Kumar examined the deceased and prepared the MLC and admitted her in neurosurgery department. The complete medical record of Sushruta Trauma Centre relating to the deceased was produced and marked as Ex.PW1/1 (Colly.) in which the pregnancy of the deceased has been mentioned at points 'A' & 'B'. The ultrasound of the deceased was also done at Sushruta Trauma Centre. The report of the ultrasound was marked at point 'C'. The deceased was thereafter shifted to LNJP Hospital on the same day.

10. Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital deposed that the deceased was admitted in LNJP Hospital on 8th June, 2008. CT Scan was performed and the deceased was operated for acute subdural hematoma. After the operation, the deceased was shifted to I.C.U. On 17th June, 2008, there was absence of foetus movement and it was found that the foetus had died. The foetus was removed by the Gynecologist on 17th June, 2008. The original record of LNJP Hospital was produced before this Court and was marked as Ex.PW-2/1 (Colly.) in which the removal of the foetus was mentioned in the record at point 'A'. The deceased expired on 14th August, 2008. Since the foetus was removed from the body of the deceased on 17th June,

2008, there was no foetus in the womb at the time of death of the deceased and, therefore, it did not find mention in the post-mortem report.

11. From the statements of Dr. Satender Kumar, CMO, Sushruta Trauma Centre, Dr. P.N. Pandey, Head of Neurosurgery Department, LNJP Hospital and medical records – Ex.PW1/1 of Sushruta Trauma Centre, Ex.PW2/1 of LNJP Hospital and MLC – Ex. P-1 (colly.), it has been proved beyond doubt that the deceased was about seven months pregnant at the time of the accident on 8th June, 2008. The MLC clearly records "uterus size up to umbilical weight approximately 24 to 26 weeks." It has further been proved from the statement of Dr. P.N. Pandey and the medical record – Ex.PW2/1 that the foetus died on 17th June, 2008 and was removed on the same day. The removal of the foetus is mentioned in Ex.PW2/1 (Colly.) at point 'A'. The deceased expired on 14th August, 2008, i.e, after about two months from the date of death of the foetus and, therefore, the foetus was not found in the post-mortem report.

12. The learned counsel for the appellants submits that the unborn child in womb should be considered at par with a minor child and the compensation be awarded for the death of the unborn child.

13. The **Karnataka High Court, Madhya Pradesh High Court, Andhra Pradesh High Court and Kerala High Court** have taken a view that the death of the foetus should be considered as equal to the death of the child for the purpose of computation of compensation in the following cases:-

(i) The Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation Vs. Vidya Shindhe, 2005 ACJ 69 (Karnataka High Court) -

The accident resulted in grievous injuries to a pregnant woman. The surgery known as 'Foetal distress' was conducted and she gave birth to a child who died after two days of delivery. The claim for compensation on account of the death of the child was filed. The learned Tribunal awarded Rs.1,50,000/- towards death of the child which was challenged before the Karnataka High Court on the ground that the claim was not maintainable as the child was not born on the date of the accident.

The Karnataka High Court held that as per the doctor's advice if the foetus had completed 37 weeks, for all practical purposes even the still-born child has to be considered as child and the claim petition filed by the mother on account of death of her two days old child who was born subsequent to the date of the accident was maintainable. The award of Rs.1,50,000/- by the learned Tribunal was upheld.

The findings of the Karnataka High Court in the above case are as under:-

> "As per the doctor's evidence, if the foetus has completed 37 weeks, for all purposes even the still-born child has to be considered as child. In the instant case, in the accident the child had also received injuries which compelled the mother to undergo a surgery. The baby died due to the injuries sustained by him in the accident while in the womb. Though there is no direct impact between the vehicle and the baby, since the baby had received injuries while in the womb; this Court has to hold that there is a nexus between the accident and the cause of death of the child. In the circumstances, this Court is of the opinion that the claim petition filed by the mother on account of the death of her two days baby who has born subsequent to the accident as maintainable."

(ii) Bhawaribai Vs. New India Assurance Co. Ltd., 2006 ACJ 2085 (Karnataka High Court) –

The claimant suffered abortion on account of the accident. The Karnataka High Court considered the death of foetus in womb at par with death of a minor. The findings of the Court are as under:-

> "In the case of abortion and death of foetus in the womb should be considered on par with the case of a death of a minor."

(iii) Shraddha Vs. Badresh, 2006 ACJ 2067 (Madhya Pradesh High Court) –

The accident resulted in injury to a pregnant women carrying seven months old foetus. Due to accident, the claimant delivered a dead male baby by operation. The Tribunal awarded Rs.70,000/- towards the medical expenses and Rs.80,000/- towards the non-pecuniary compensation.

The appeal was filed for enhancement of the compensation. Madhya Pradesh High Court followed the judgment of the Karnataka High Court in the case of Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation (supra) and enhanced the compensation from Rs.1,50,000/- to Rs.2,50,000/- . The Court held that a still-born baby has to be considered as child.

The findings of the Court are as under:-

> **"For the purpose of considering the case for awarding compensation even the stillborn baby has to be considered as child.** Stillborn baby died in the womb due to the injuries sustained by the appellant in the accident. In the opinion of this Court there is a nexus between the accident and the cause of death of the child. Appellant is entitled for compensation on account of death of or stillborn male baby. It was first delivery of the appellant. Since, no separate amount has been awarded on that account, therefore, this appeal stands allowed. Appellant shall be further entitled for a sum of Rs. 1,00,000 on account of death of stillborn male child. Total sum for which appellant shall be entitled comes to Rs. 2,50,000. The enhanced amount of Rs. 1,00,000 shall carry interest at the rate of 6 per cent per annum from the date of application."

(iv) Branch Office, New India Assurance Co. Ltd. Vs. Krishnaveni, MANU/TN/2882/2009 (Madras High Court) -

The accident resulted in death of a pregnant woman with a nine month pregnancy. The Madras

High Court following the Karnataka High Court and Madhya Pradesh High Court held that the still-born baby has to be considered as a child and compensation of Rs.2,00,000/- was awarded for loss of child in mother's womb. It was held as under:-

> "7. Learned Counsel for the first respondent/claimant would submit that the Tribunal has lost sight of awarding any compensation for the death of child in the mother's womb and a considerable compensation has to be awarded in this regard. He placed reliance upon a decision of the Karnataka High Court in 2004 (2) T.A.C. 574 (Kant.) Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation, Bangalore v. VidyaShinde and Anr. decided in the case of death of the foetus, completed 37 weeks, in the mother's womb, she was awarded a sum of Rs. 1,50,000/- as compensation. In the said case, the claimant lady has undergone surgery known as 'foetal distress' and male baby was born and she was kept in I.C.U but died after two days of delivery. It is also argued before this Court that if the mother had a normal delivery, there is no necessity to keep the baby in I.C.U. and there is no necessity for the claimant/respondent to undergo surgery.
>
> 8. The learned Counsel for the first respondent also garnered support from and decision of the Madhya Pradesh High Court in : 2006 ACJ 2067 Shraddha v. Badresh and Ors. wherein identical situation arose that the baby was stillborn and it has to be considered as a child, that the child died due to the accident and separate amount of compensation was payable to its death. For this purpose, the amount of Rs. 1,50,000 awarded by the Tribunal was enhanced to Rs. 2,50,000/- from Rs. 1,50,000/-.

9. This Court is in respectful agreement with the concluding in the above said two decisions of the High Courts and holding that the stillborn baby is also to be considered as a child. This Court also records finding that since the child died in the womb due to the accident, the mental agony and physical strain and pain experienced by the mother should have been more and that has to be compensated in an appropriate manner. In the considered opinion of this Court a sum of Rs. 2,00,000/- may be fixed under the head loss of child in the mother's womb."

(v) Oriental Insurance Co. Ltd. Vs. Santhilal Patal, 2007(4) ACD 835 (Andhra Pradesh High Court) –

The accident resulted in the death of a women and ten month old foetus. The Andhra Pradesh High Court held that an unborn child aged five months onwards in the mother's womb till its birth can be treated as a child in existence. The unborn child to whom the live birth never comes can be held to be a 'person' who can be the subject of an action for damages for his death. The findings of the Court are as under:-

"6. .....Under Section 166 of the Act a person who has sustained injury or the legal heirs of the deceased person are entitled for compensation arising out of the accident involving death or bodily injuries. Therefore, if the child comes within the definition of person, I am of the opinion that the legal heirs of the child are entitled for compensation. Under Section 8 of the Indian Penal Code, 1860 a gender means the pronoun "he" and its derivatives are used of any person, whether male or female. The meaning of a person as per Oxford Dictionary is 'a human being regarded

as an individual and an individual's body : concealed on his person'.

7. No doubt, the Karnataka High Court in Divisional Controller, Karnataka State Road Transport Corporation v. Vidya Shindhe 2005 ACJ 069 : 2003 ILR (Kar) 04269, held that the stillborn child has to be considered as a child. The Madhya Pradesh High Court in Shraddha v. Headrest's II (2006) ACC 304, following the aforesaid judgment of the Karnataka High Court held that the stillborn child died in the accident due to the injuries sustained by its mother in the accident is also entitled to compensation, as there is nexus between the accident and the cause of death of the child and awarded a compensation of Rs. 1,00,000/- for the death of the stillborn child. In the said case the appellant was having pregnancy of 28 weeks whereas in the instant case the child in the womb was counting his days for delivery as he was aged about 10 months i.e. 40 weeks. In fact, the Supreme Court in S. Said-ud-Din v. Commissioner Bhopal Das Victims : (1997)11SCC460 , awarded compensation to a child, who was adversely affected due to the gas leakage, which was inhaled by her mother when the child was in the womb. The doctor who examined the child on the sixth day of its birth found symptoms including eruption of body and smarting of the eye as well as breathlessness. Therefore, the Supreme Court held that as the infant too was the victim of the MIC poison, she was entitled to compensation. Various Human Rights Commissions also held that the stillborn child is entitled to compensation on account of the injuries caused or death occurred due to violation of human rights. Even the Transfer of Property Act recognized the rights of the stillborn child and several provisions of the Indian Penal Code, 1980, also provide for punishment by reason of hurt or birth or abortion with regard to the stillborn child.

8. To decide whether a child in the womb of the mother can be called as a person, it is pertinent to discuss different stages of birth of a child in the womb of a mother. Technically the term developing ovum is used for the first seven to ten days after conception i.e. until implantation occurs. It is called an 'embryo' from one week to the end of the second month and later it is called 'foetus'. It becomes an infant only when it is completely born. The life may enter immediately on the date of conception in the form of a small cell, which gets multiplied, but physically a mother can feel the movement of child only when the foetus is twenty weeks old i.e., five months, as the cell changes its structures and texture to become an eye, legs, bones, blood, head etc. and only when the child makes movements touching the internal walls of the womb, then the actual life does take its physical form, therefore, there may be controversy as regards the exact date of life entering the foetus but there cannot be any controversy as regards the life of the unborn child if a woman is carrying seven months pregnancy, as in many instances premature delivery takes place during the seventh month of pregnancy and the child still survives.

An unborn child aged five months onwards in the mother's womb till its birth can be treated as equal to a child in existence. The unborn child to whom the live birth never comes can be held to be a 'person' who can be the subject of an action for damages for his death. As already stated above a person means a human being regarded as an individual and an individual's body : concealed on his person'. Therefore, human foetus to whom personhood could be attributed was also destroyed in the accident in the instant case; had the accident not occurred the unborn child would have survived and seen the light of the day.

> 9. In the instant case, admittedly the age of the stillborn child is ten months; therefore, I am of the opinion that the claimant is entitled to compensation under Section 140 read with Section 166 of the Act. In view of the aforesaid facts and circumstances of the case, I do not see any merit in any of the contentions of the learned Counsel for the appellant - insurance company."

(vi) Manikuttan Vs. M.N. Baby, 2009 ACJ 1497 (Kerala High Court) –

The accident resulted in the death of a pregnant woman carrying a four month old foetus. Compensation for loss of foetus was claimed. The Kerala High Court held that foetus is another life in the woman and it comes as a baby in the course of time. Loss of foetus upon death of a pregnant woman is actually loss of a child in the offing for the husband of the woman. The Court held that compensation to be granted for the death of a pregnant women is for loss of two lives.

The findings of the Court are as under:-

> **"In the first place, foetus is another life in the woman and it comes as a baby in the course of time. Though foetus grows in the body of the woman, it cannot be equated to or considered to be a part of the body of the woman. In effect, loss of the foetus consequent upon the death of the pregnant woman is actually loss of a child in the offing for the husband of the woman.** Secondly, there is no scope for considering compensation for the bodily injury of the victim who died in the road

> accident. Therefore, it would be illogical to grant compensation treating death of the foetus along with the woman dying in the accident treating death of the foetus along with the Woman dying in the accident treating it as another bodily injury. **In our view, compensation to be granted for the death of a pregnant woman in motor accident is for loss of two lives.** Therefore, appellant in this case is certainly entitled to claim compensation separately for the loss of his child in the womb of his wife who perished in the accident."

14. The Himachal Pradesh High Court in the case of **Rakesh Kumar Vs. Prem Lal, 1996 ACJ 980 – (MANU/HP/0043/1995)** has taken the view that the foetus is a part of the body of the deceased and no separate compensation is admissible on the ground of loss of foetus.

15. The Bombay High Court, in the case of **Margappa Shethappa Vadar Vs. Proctor and Gamble India, 2008 ACJ 2802,** has taken the contrary view holding that unborn child in the womb is not a person within the meaning of Sections 165 and 166 of the Motor Vehicles Act. The accident resulted in death of a pregnant woman with 28 weeks old foetus in her womb. Two claim petitions were filed before the Claims Tribunal – one for the death of the woman and the other for the death of unborn child in the womb. The learned Tribunal rejected the claim holding that

unborn child in the womb will not be included in the word 'person'. Following the Division Bench judgment of the Himachal Pradesh High Court in the case of Rakesh Kumar Vs. Prem Lal, Bombay High Court dismissed the appeal holding that the foetus or a child in the womb is not a person within the meaning of Sections 165 and 166 of the Motor Vehicles Act.

16. The rights of an unborn child are well recognized in various different legal contexts which are as under:-

> (i) Section 6 of the Limitation Act, 1963 provides that where a person entitled to institute a suit or make an application for execution of the decree is, at the time from which the prescribed period is to be reckoned, a minor, he may institute the suit or make the application within the same period after the disability has ceased. Explanation to Section 6 reads thus:
>
> "Explanation:-- For the purposes of this section, 'minor' includes a child in the womb."
>
> (ii) Section 20 of the Hindu Succession Act, 1956 recognises the rights of a child in the womb. Section 20 reads thus:
>
> > "**Section 20. Right of child in womb**:
> >
> > A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she

had been born, before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate."

(iii) Mulla on Hindu Law, Fifteenth Edition, contains a commentary by the author while dealing with Section 20. The commentary reads thus:

> "It is by fiction or indulgence of the law that the rights of a child born justo matrimonio are regarded by reference to the moment of conception and not of birth and the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. This view is not peculiar to the ancient Hindu law but one which is adopted by all mature systems of jurisprudence. This section recognises that rule of beneficent indulgence and the child in utero although subsequently born is to be deemed to be born before the death of the intestate and inheritance is to be deemed to vest in the child with effect from the date of the death of the intestate."

(iv) In the Indian Succession Act, 1925, 'minor' is defined under Section 2(e), which reads as follows:

> "Section(2)(e) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person;"

Section 7 of the Indian Succession Act provides that the domicile of origin of every person of legitimate birth is in the country in which at the time of his birth

his father was domiciled and in the case of a posthumous child, in the country in which his father was domiciled at the time of the father's death. Section 112 of the Indian Succession Act recognises the rights of a person coming into existence after the death of a testator.

(v) Sections 13 and 20 of the Transfer of Property Act deal with situations in which on a transfer of property, an interest therein is created for the benefit of a person not in existence. As per Section 20, where on a transfer of property an interest therein is created for an unborn person, he acquires on his birth, a vested interest.

(vi) Sections 312 to 316 of the Indian Penal Code provide for punishment for the offence of miscarriage; for doing any act with intent to prevent child being born alive; for causing death of quick unborn child by act amounting to culpable homicide etc.

(vii) The question whether a posthumous child would succeed to the estate of his father or a testator was a vexed one for the courts. In **Elliot v. Lord Joicey and Ors., 1935 A.C. 209**, it was held thus:

> "From the earliest times the posthumous child has caused a certain embarrassment to the logic of the law, which is naturally disposed to insist that at any given moment of time a child must either be born or not born, living or not living. This literal realism was felt to bear hardly on the interests of posthumous children

and was surmounted in the Civil Law by the invention of the fiction that in all matters affecting its interests the unborn child in utero should be deemed to be already born. The classical statement is to be found in the words of Paulus: "Qui in utero est, perinde ac si in rebus humanis esset, custoditur, quoties de commodis ipsius partus quaeritur: quanquam alii, antequam nascatur, nequaquam prosit" (Dig. Bk.l. Tit. v. De Statu Hominum, Section 7), thus rendered in Monro's translation: "An unborn child is taken care of just as much as if it were in existence, in any case in which the child's own advantage comes in question; though no one else can derive any benefit through the child before its birth." 'There is indeed," says Craig, commenting on this passage, "no reason in the case of a posthumous child to aggravate the calamity it suffers by the premature death of the father, nor to make that event a ground for diminishing its rights" (Jus Feudale, Lib. II., Dieg. 13, Section 15; Lord Clyde's translation II .p.643).

This fiction has undoubtedly been adopted in the law of Scotland....

It is satisfactory for the purposes of the present case to find that the law of England in this matter is to all intents and purposes the same as the law of Scotland. The same fiction, derived from the same source in the Civil Law, and qualified by the same condition, is common to both systems. In the English case of Villar v. Gilbey, (1907) A.C. 139 your Lordships' House had occasion to emphasize that the limitation, which the Court of Appeal had there discarded, was an essential part of "this peculiar rule of construction," which accordingly applies only where it is for the benefit of the unborn child to apply it."

(viii) In **Moore v. Wingfield, (1903) 2 Ch. 411, Justice** Vaughan **Williams L.J.** held:

> "In Blackstone's Commentaries, 4th ed. vol.i. 129, 130, it is stated that in contemplation of law life begins as soon as an infant is able to stir in the mother's womb: "For if a woman is quick with child, and by a potion, or otherwise, killeth it in her womb; or if any one beat her, whereby the child death in her body, and she is delivered of a dead child; this, though not murder, was by the ancient law homicide or manslaughter." Then the learned author goes on: "An infant in ventre sa mere, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to it's use, and to take afterwards by such limitation, as if it were then actually born." And the rule as to a posthumous child being capable of taking in remainder (1) is stated in the same work, vol.ii, 169.1 merely mention this because part of Mr. Buckmaster' s argument seems to have proceeded upon the assumption that although, according to Buckley J's judgment, there was a rule that a child during the period of gestation was to be treated as "a life in being," that was a rule of law applicable in some cases only. In my opinion, upon the authorities, that rule is applicable when you have to deal with the rule against perpetuities. For that purpose it is plain that, as soon as the child is born, that satisfies the limitation, and you retrospectively treat the life of that child as "a life in being" at the death of the testator."

In the same decision, **Romer L.J.**, held thus:

> "For the purpose of deciding questions of perpetuity arising upon gifts in a will of the kind we find in the will in the present case, there is,

in my opinion, an established rule that a child en ventre sa mere at the time of the testator's death, who is subsequently born, must be treated as having been alive at the death of the testator. And I do not think that rule should be departed from merely because, for some reason, it is in the interest of the child to contend that the gift is void as infringing the rule against perpetuity."

(ix) In **Aswini Kumar Pan v. Parimal Debi, : AIR1964Cal354** , a question arose whether a posthumous son, within three years of his attaining majority, could challenge an alienation made by his widowed mother. Holding in the affirmative, it was held:

"13. We put it on the short ground that, in law, a child in the mother's womb is deemed to be in existence, at least for purposes of inheritance, which alone are relevant here, and has thus a right to challenge any transaction, which affects its interest at the time. If so, it has a right of action or a cause of action in respect of the said transaction and is entitled to institute a suit upon the same and, as such a child, as aforesaid, cannot, under the Indian Majority Act, be held to be a major, it must be held to be a minor, that is, a person, suffering from disability, as contemplated in the aforesaid Section 6 of the Indian Limitation Act. This, we may respectfully add, has been rightly pointed out in the above three decisions of the Madras, Bombay and Allahabad High Courts, namely, : AIR1951All630 , already cited, and their Lordships have sufficiently demonstrated in those three decisions that there is nothing in the Indian Majority Act or in the Indian Limitation Act either, which conflicts with the view that a child in the mother's womb is a person in existence and is a minor. Indeed, so

far as this latter part is concerned, namely, that such a child, if it be a person in existence, must be a minor, the relevant statute (the Indian Majority Act) carries its own confirmation, as, obviously on the terms of Section 3 and/or Section 4 of the said Act, a person is a minor until he attains the relevant age of majority, be it eighteen or twenty-one years, as the case may be, and as, so far as the theory of a child en ventre sa mere is concerned, if it otherwise applies to a particular case, as here, which is a case of inheritance, neither of the above two statutes would exclude it or render it inapplicable."

(x) Black's Law Dictionary refers to "rights of unborn child", thus: "The rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law, murder includes the unlawful killing of a foetus (Cal. Penal Code Section187), and the law of property considers the unborn child in being for all purposes which are to its benefit, such as taking by will or descent. After its birth, it has been held that it may maintain a statutory action for the wrongful death of the parent. In addition, the child, if born alive, is permitted to maintain an action for the consequences of prenatal injuries, and if he dies of such injuries after birth, an action will lie for his wrongful death. While certain States have allowed recovery even though the injury occurred during the early weeks of pregnancy, when the child was neither viable nor quick, Sinkler v. Kneale, 401 Pa.267,167 A.2d.93; Smith v. Brennan, 31 N.J.353, 157 A.2d.497, other States require that the foetus be viable before a

civil damage action can be brought on behalf of the unborn child."

(xi) The legal status of unborn persons is discussed in **Salmond on Jurisprudence**, 11th Edition, at pages 354 and 355, the relevant portion of which reads as follows:

> "Though the dead possess no legal personality, it is otherwise with the unborn. There is nothing in law to prevent a man from owning property before he is born. His ownership is necessarily contingent, indeed, for he may never be born at all; but it is none the less a real and present ownership. ....
>
> A child in its mother's womb is for many purposes regarded by a legal fiction as already born, in accordance with the maxim, Nasciturus pro jam nato habetur. In the words of Coke: "The law in many cases hath consideration of him in respect of the apparent expectation of his birth". Thus, in the law of property, there is a fiction that a child en ventre sa mere is a person in being for the purposes of (1) the acquisition of property by the child itself, or (2) being a life chosen to form part of the period in the rule against perpetuities."
>
> The rights of the child in the womb, in the matter of succession, are well protected by laws of the land.

17. This Court is of the view that the rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law causing death of foetus has been held to be an offence under Sections 312 to 316 of the Indian Penal Code, and the law of property considers the unborn child in being for all purposes

which are to its benefit, such as taking by will or descent. This Court is in respectful agreement with the judgments of Andhra Pradesh High Court in the case of **Oriental Insurance Co. Ltd.** (supra) and Kerala High Court in the case of **Manikuttan** (supra), and holds that an unborn child aged five months onwards in mother's womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The foetus is another life in woman and loss of foetus is actually a loss of child in the offing. The appellants are, therefore, entitled to compensation for the loss of foetus.

18. The learned counsel for the appellants refers and relies upon the judgment of this Court in the case of **National Insurance Co. Ltd. Vs. Farzana, MAC APP. No.13/2007** decided on 14th July, 2009 in which compensation of Rs.3,75,000/- has been determined in respect of the death of a child aged 7 years, following the judgments of the Hon'ble Supreme Court and this Court in the cases of **Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257, Sobhagya Devi Vs. Sukhvir Singh, II (2006) ACC 1997, Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320, R.K.**

Malik vs. Kiran Pal, III (2006) ACC 261, R.K. Malik vs. Kiran Pal, 2009(8) Scale 451. This Court held as under: -

> "4. In the case of ***Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257,*** the Hon'ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-
>
> > "As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-"
>
> 5. The case of **Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997** relates to the death of a 12-year old boy. Following the decision of the Apex Court in **Manju Devi's case (supra)**, the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.
>
> 6. The case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in ***Manju Devi's case*** **(supra)** awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-
>
> > "3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to

appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-.

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to Rs.15,000 x 15 = Rs.2,25,000/-.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental

> agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of **R.K. Malik vs. Kiran Pal, III (2006) ACC 261,** 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15th May, 2009 and is reported as **R.K. Malik vs. Kiran Pal, 2009(8) Scale 451**. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children. The findings of the Hon'ble Supreme Court are as under:-

> "19. The other issue is with regard to non-pecuniary compensation to the appellants-dependents on the loss of human life, loss of company, companionship, happiness, pain and suffering, loss of expectation of life etc.

20. In the Halsbury's Laws of England, 4th Edition, Vol. 12, page 446, it has been stated with regard to non-pecuniary loss as follows:

> "Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

21. In the case of Ward v. James (1965) I All E R 563, it was observed:

> "Although you cannot give a man so gravely injured much for his `lost years', you can, however, compensate him for his loss during his shortened, span, that is, during his expected `years of survival'. You can compensate him for his loss of

earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.

22. The Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551, at page 556, has observed as follows in para 9:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by

the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In this case, the Court awarded non-pecuniary special damages of Rs. 3, 00,000/- to the claimants.

23. In Common Cause, A Registered Society v. Union of India (1999) 6 SCC 667 @ page 738, it was observed:

"128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or

> replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In Mediana, Re Lord Halsbury, L.C. observed as under: "How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognises that as a topic upon which damages may be given."

24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life,

pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation need not be restricted to a case where the injured person himself initiates action but is equally admissible if his dependant brings about the action.

25. That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression "standard compensation" and "conventional amount/sum" to get over the difficulty that arises in quantifying a figure as the same ensures consistency and uniformity in awarding compensations.

26. While quantifying and arriving at a figure for "loss of expectation of life", the Court have to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head i.e. pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for

loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term "conventional compensation" used in the said case has been used for non pecuniary compensation payable on account of pain and suffering as a result of death. The Court in the said case referred to Rs. 50, 000/- as conventional figure. The reason was loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

28. In Lata Wadhawa case (supra), wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards `conventional compensation". In the case

of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12, 000/- per annum as recommended by Justice Y. V.Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one of his children employed in the said company.

29. In the case of M.S. Grewal v. Deep Chand Sood MANU/SC/0506/2001, wherein 14 students of a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, this Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasized that the Court must ensure that a just compensation was awarded.

30. In Grewal case (supra), compensation of Rs. 5 lakhs was awarded to the claimants and the same was held to be justified. Learned Counsel for the respondent No. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the

compensation was awarded in that case would equally apply to the present case.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the Courts below. On perusal of the evidence on record, we find merit in such submission that the Courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the Courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in General Manager, Kerala S. R. T. C. v. Susamma Thomas(1994) 2 SCC 176; Sarla Dixit v. Balwant Yadav (1996) 3 SCC 179; and Lata Wadhwa case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were

children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

33. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to R. D. Hattangadi case (supra). Further, the said compensation must be just and reasonable. This Court has observed as follows in State of Haryana v. Jasbir Kaur (2003) 7 SCC 484:

> "7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn

appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and

reasonableness, and non-arbitrary. If it is not so it cannot be just."

34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We do not find any infirmity in that regard."

9. The learned Tribunal was in error in taking the notional income to be Rs.22,500/- per annum.

> Following the aforesaid judgments, the notional income of the deceased is taken to be Rs.15,000/- per annum and applying the multiplier of 15, the claimants are entitled to loss of dependency of Rs.2,25,000/-. The claimants are also entitled to compensation of Rs.75,000/- towards the future prospects in terms of the judgment of the Hon'ble Supreme Court in **R.K. Malik Vs. Kiran Pal, 2009 (8) Scale 451**. The claimants are also entitled to a further sum of Rs.75,000/- towards non-pecuniary damages in terms of the judgment of this Court in the case of **R.K. Malik Vs. Kiran Pal, III (2006) ACC 261** upheld by the Hon'ble Supreme Court. The claimants are entitled to total compensation of Rs.3,75,000/- (Rs.2,25,000/- + Rs.75,000/- + Rs.75,000/-)."

19. The learned counsel for the appellants submits that compensation of Rs.3,75,000/- be awarded to the appellants following the judgment of this Court in **National Insurance Company Ltd. Vs. Farzana** (supra)**.**

20. The judgment of this Court in **National Insurance Company Ltd. Vs. Farzana** (supra) relates to the death of 7 year old child whereas the present case relates to the death of a seven months old foetus. The seven months old foetus cannot be compared with seven years old child and, therefore, this Court is not inclined to award Rs.3,75,000/- to the appellants. A foetus shall be treated as a child does not mean that the compensation in respect of a foetus shall be equal to a seven year old school going child. The love and affection of the parents for seven year

old child cannot be equated with that of a foetus which has yet to take birth. The love and affection develops after the birth of the child and it keeps on growing and goes deep in the memory. The death of a seven year old child would leave deep memories and, therefore, deeper hurt. In case of death of a child, the photographs of the child and other articles belonging to him/her keep on reminding the parents of the child and make them sad. Memories are also refreshed when parents see other children of same age and it takes a very long time for pain and suffering to dissolve, whereas there are no such memories in case of a foetus and, therefore, lesser hurt. The compensation awarded to a seven year old child, therefore, needs appropriate correction. Considering that Rs.2,50,000/- was awarded by Madhya Pradesh High Court in the case of **Shraddha** (supra), Rs.2,00,000/- by Madras High Court in the case of **Krishnaveni** (supra) and Rs.1,50,000/- by Karnataka High Court in the case of **Bhawaribai** (supra), Rs.2,50,000/- is awarded to the appellants in the present case.

21. The appeal is allowed and the compensation of Rs.2,50,000/- along with interest @7.5% per annum from the date of filing of the petition till realization is awarded to appellant No.1 towards the death of seven months old foetus on 17th June, 2008.

22. Considering the important question of law involved, this Court appointed Ms. Rajdipa Behura, Advocate as amicus curiae to assist this Court. This Court appreciates the able assistance rendered by the learned amicus curiae.

23. The award amount be deposited by respondent No.2 with UCO Bank, Delhi High Court Branch A/c Prakash by means of a cheque through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

24. Upon the aforesaid deposit being made, the UCO Bank is directed to keep a sum of Rs.2,00,000/- in fixed deposit in the name of appellant No.1 in the following manner:-

(i) Fixed deposit for Rs.25,000/- for a period of six months.

(ii) Fixed deposit for Rs.25,000/- for a period of one year.

(iii) Fixed deposit for Rs.25,000/- for a period of one and a half years.

(iv) Fixed deposit for Rs.25,000/- for a period of two years.

(v) Fixed deposit for Rs.25,000/- for a period of two and a half years.

(vi) Fixed deposit for Rs.25,000/- for a period of three years.

(vii) Fixed deposit for Rs.25,000/- for a period of three and a half years.

(viii) Fixed deposit for Rs.25,000/- for a period of four years.

25. The remaining amount be released to appellant No.1 by transferring the same to his Saving Bank Account.

26. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellant.

27. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

28. No cheque book be issued to appellant No.1 without the permission of this Court.

29. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to appellant No.1 along with the photocopy of the FDRs.

30. The original Fixed Deposit Receipts shall be handed over to appellant No.1 on the expiry of the period of the FDRs.

31. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

31. Half yearly statement of account be filed by the Bank in this Court.

32. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellant.

33. Appellant No.1 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

34. List for reporting compliance on 23rd April, 2010.

35. Copy of the order be given dasti to counsel for both the parties under the signature of Court Master.

36. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

FEBRUARY 05, 2010

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MAC.APP. 293/2008

SHOBHA GULHAR ..... Appellant
Through : Mr. D.D. Singh, Adv.

versus

RAM PAL ..... Respondent
Through : Mr. Amit Kumar Pandey, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 08.03.2010

1. Respondent No.3 has deposited a sum of Rs.5,21,845/- with UCO Bank in terms of the judgment dated 19th November, 2009.

2. The UCO Bank is directed to release a sum of Rs.25,000/- to appellant No.1, Rs.25,000/- to appellant No.2 and Rs.21,845/- to appellant No.3 by transferring the same to their respective Saving Bank Account.

3. The remaining amount of Rs.4,50,000/- be kept in fixed deposit in the following manner:-

(i) Fixed deposit for Rs.1,00,000/- in the name of appellant No.1 for a period of six months.

(ii) Fixed deposit for Rs.50,000/- in the name of appellant No.3 for a period of one year.

(iii) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of one and a half years.

(iv) Fixed deposit for Rs.50,000/- in the name of appellant No.3 for a period of two years.

(v) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of two and a half years.

(vi) Fixed deposit for Rs.50,000/- in the name of appellant No.3 for a period of three years.

(vii) Fixed deposit for Rs.50,000/- in the name of appellant No.1 for a period of three and a half years.

(viii) Fixed deposit for Rs.50,000/- in the name of appellant No.3 for a period of four years.

4. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellants No.1 and 3.

5. Withdrawal from the aforesaid account shall be permitted to

appellants No.1 and 3 after due verification and the Bank shall issue photo Identity Card to appellants No.1 and 3 to facilitate identity.

6. No cheque book be issued to appellants No.1 and 3 without the permission of this Court.

7. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to appellants No.1 and 3 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

8. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

9. Half yearly statement of account be filed by the Bank in this Court.

10. On the request of appellants No.1 and 3, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellants No.1 and 3.

11. The appellant Nos.1 to 3 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed

Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

13. Appellants No.1 and 3 submit that some more amount may be released to them as they have taken some loan for the marriage of appellant No.2 and have also to make the payment in respect of purchase of some property. Let the relevant

documents in this regard be produced before this Court on the next date of hearing when this Court will consider the modification of the above order.

14. It is pointed out that the special scheme for victims of road accidents has been formulated by UCO Bank and State Bank of India only. It is further pointed out that at times, the UCO Bank and the State Bank of India have no branch near the place of residence of the claimant and, therefore, the other Banks be also requested to formulate the special scheme so that the award amount can be permitted to be deposited in the Bank convenient to the claimants.

15. Let notice be issued to Indian Bank Association. Ms. Neena Gupta, Advocate present in Court accepts notice on behalf of Indian Banks Association.

16. Indian Bank Association shall take up the matter with all its member Banks for formulation of the special scheme. The minutes of the meeting or the acceptance of the Banks to such scheme be submitted to this Court along with names and addresses of the Nodal Officers of such Banks in Delhi. The Nodal Officer shall be responsible for implementation of the Scheme in Delhi.

17. List on 23rd March, 2010.

18. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

19. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

20. Copy of this order be given Dasti to Ms. Neena Gupta,

counsel for Indian Banks Association under the signature of the Court Master. Copy of order dated 21st April, 2009 in MAC.APP.No.130/2009 and the order passed by the Hon'ble Supreme Court in the case of Jai Prakash Vs. National Insurance Co, 1 (2010) ACC 1 (SC) be also given to learned counsel for the Indian Bank Association.

J.R. MIDHA, J

MARCH 08, 2010
aj

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

MAC.APP. 293/2008

SHOBHA GULHAR and ORS. ..... Appellants
Through: Mr. D.D. Singh, Advocate.

versus

RAM PAL and ORS. .....Respondents
Through: Mr. Amit Kr. Pandey, Advocate for R-3.
Ms. Nina G. Bhasin, Mr. Ranjan Kr. Jha and Mr. Akshat Gail, Advocates for Indian Bank Association.

CORAM:
JUSTICE SHIV NARAYAN DHINGRA

O R D E R
07.04.2010

Ms. Nina G. Bhasin, Advocate appearing on behalf of Indian Bank Association submits that a meeting of the Association of which all Public Sector Banks and some private banks are members was called and the members had decided to extend the same facility in respect of claimants as was being extended by UCO Bank and State Bank of India in Delhi and they shall appoint their Nodal Officers similarly. She has placed on record copy of circulars dated 11th March, 2010 and 27th March, 2010. As and when the banks inform this court and to the Tribunal about Nodal

Officers and their phone numbers, the court shall be passing order for deposit of awarded amount in all banks, who agreed to the proposal.

Counsel for claimants seeks time to move an appropriate application on behalf of claimants as to how the claimants propose to invest the amount. The awarded amount is already lying in the UCO Bank. As and when the application is made, the court shall pass an order.

The appeal stands disposed of.

A copy of this order be given dasti to counsel for forwarding it to Indian Bank Association.

SHIV NARAYAN DHINGRA, J.

APRIL 07, 2010

8

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 74/2001

MASTER SEWA RAM ..... Appellant
Through : Mr. A.K. Srivastava, Adv.

versus

VIJAY & ORS. ..... Respondents
Through : Mr. Pankaj Seth, Adv. for R-3.
Mr. V.K. Tandon, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

O R D E R

% 22.03.2010

1. The MLO (Hqrs.) is present in the Court and he has produced the record pertaining to three-wheeler tempo bearing No.DLG-7961. The copy of relevant pages is taken on record.

2. The MLO (Hqrs.) submits that policy No.4713303257 was furnished by Sunman Singh at the time of transfer of said vehicle from the previous owner but the copy of the said policy is not on record.

3. The perusal of the original record of the vehicle produced by the MLO shows that the record has not been maintained in the proper manner. The copy of the policy of New India Assurance Co. Ltd. has been torn and, therefore, particulars of the said document cannot be ascertained. The file produced by the MLO is not even page numbered and it cannot be ascertained as to what documents were placed on file as there are no office notings. The record has been maintained in a very casual manner.

4. Considering that the file produced by the MLO contains the torn copy of the policy, the Secretary-cum-Commissioner (Transport) is directed to conduct an inquiry into the matter and submit report on the next date of hearing. The Secretary-cum-Commissioner (Transport) shall also ascertain as to how the policy number was taken on record without the copy of the policy. The Secretary-cum-Commissioner (Transport) shall also investigate whether a forged policy was submitted at the time of transfer and whether the same was removed before producing the file before

this Court to ensure that the racket of fake policies is not known to this Court.

5. It is the statutory requirement under Section 146 of the Motor Vehicles Act that all the vehicles on road should be compulsorily insured and the non-insurance of vehicles is punishable under Section 196 of the Motor Vehicles Act with three months imprisonment or fine or both. It is the duty of the Registration Authority to ensure that all the vehicles are properly insured and the uninsured vehicles should not be permitted to ply on road. The Road Transport Office is not maintaining the record of the vehicles whose policy has expired. It is suggested that the data of uninsured vehicles should be sent to the local police station for immediate action against the uninsured vehicles and the uninsured vehicles should be sealed after giving sufficient notice to the owner to ensure that the uninsured vehicles do not ply on the roads.

6. Considering the important question involved, Mr. Pradeep

Gaur, Advocate is appointed as amicus curiae in this matter to assist this Court. The learned amicus curiae submits that the MLO should maintain proper record of insurance of all the vehicles and the record of registration number along with the Insurance particulars should be integrated, computerized and put on-line and the prosecution FAO 74/2001

of the uninsured vehicles should be launched immediately on finding that the vehicle has not been insured. The learned amicus curiae further submits that the uninsured vehicles should not be permitted to ply on the road. The learned amicus curiae points out that the Road Transport Office is not maintaining any system for verification of the Insurance Policies. The learned amicus curiae also points out that only a photocopy of the Insurance policy is taken at the time of the transfer of the offending vehicle and the Road Transport Office does not even verify whether the photocopy of the cover note/policy tendered at the time of the transfer of the vehicle is genuine or not. It is also pointed out that there is a racket of issuance of fake cover notes/policies which are

submitted at the time of the transfer of the vehicles and no care is taken to ensure that the policy is genuine. The learned amicus curiae also points out that Road Transport Office does not maintain any system to check whether the Insurance Policy is renewed after the expiry of the period mentioned therein.

7. Mr. V.K. Tandon, Advocate for Government of NCT of Delhi submits that he shall apprise the Government of NCT of Delhi of this order and shall take appropriate instructions for streamlining the system.

8. Considering the nature of issue involved, a Committee comprising of the Secretary (Transport), Government of NCT of Delhi, Joint Commissioner, Northern Range of Delhi Police, Mr. Vikas Pahwa, Additional Standing Counsel for Delhi Police, Mr. Pradeep Gaur, the learned amicus curiae, and Mr. V.K. Tandon, counsel for Government of NCT of Delhi is constituted to consider the aforesaid suggestions of the learned amicus curiae to streamline the system. The Joint Commissioner, Northern Range of Delhi Police shall be the Convener of the Committee. The first meeting of the Committee be convened within a period of 45 days.

9. Vide order dated 25th September, 2009, this Court had given some suggestions to the Expert Committee for consideration for amendment of the law relating to the motor vehicles. The relevant portion of the said order is reproduced hereunder:-

> "8. The Government may also examine law relating to Motor Accident Claims in South Africa which provides that all vehicles on road are insured for third party risk and the owners of the vehicles are not required to take the insurance policy for third party liability. A surcharge is added to the cost of petrol/diesel and the amount so collected is sent to Road Accident Fund which is managed by Road Accident Fund Commission.

> 9. The Road Accident Fund Commission manages and disburses the Road Accident Fund. The Commission also enquires into and makes recommendations regarding the system for computation and disbursement of compensation to the victims of road accident. The Commission also examines the factors responsible for the accidents such as excessive speed, influence of alcohol, vehicle fitness, overloading, poor brakes and road environmental conditions including poor maintenance of road surface and inadequate signs and markings. The Commission also makes contribution of Fuel Levy Fund for campaign/programmes to promote road safety.
>
> 10. The South African model system shall also save the cost of manpower used by Insurance companies

to issue policies. The report of Road Accident Fund Commission in South Africa is available on the website, http://transport.gov.za/library/docs/raf/index.htm."

10. It has been brought to the notice of this Court that in Canada, the fund for payment of compensation to the victims of road accidents is collected from the following three sources:-

(i) Insurance contribution payable by the owner of vehicle upon registration of a road vehicle for the right to operate the vehicle.

(ii) Annual Insurance contribution payable by the owner of the vehicle to retain the right to operate a road vehicle.

(iii) Annual Insurance contribution payable by a driving licence holder.

11. The relevant documents relevant to the law in Canada downloaded from the website- http://www2.publicationsduquebec.gouv.gc.ca/dynamicSearch/telecharge.php?type=3&file=/A 25/A25R1 2 A.HTM may be sent to Mr. S. Sundar, Chairman of the Expert Committee appointed by the

Ministry of Road, Transport and Highways along with the copy of this order for consideration while recommending the amendment of law.

12. List for report of the Committee on 18th May, 2010.

J.R. MIDHA, J

MARCH 22, 2010/aj

27

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 365/1999

Date of decision : 26th March, 2010

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SAT PRAKASH & ORS ..... Appellant
Through : Mr. O.P. Mannie, Adv.

versus

JAGDISH & ORS ..... Respondents
Through : Mr. Pankaj Seth, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment? **YES**

2. To be referred to the Reporter or not? **YES**

3. Whether the judgment should be reported in the Digest? **YES**

JUDGMENT

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.1,17,600/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 25th February, 1990 resulted in the death of Bal Kishan. The deceased was survived by two sons,

one daughter, legal representatives of pre-deceased daughter and mother who filed the claim petition before the learned Tribunal.

3. The deceased was aged 50 years at the time of the accident and was helping his father in agriculture and dairy business. The Claims Tribunal took the income of the deceased as Rs.881/- per month according to the minimum wages and Rs.1,200/- per month from his agriculture work. The total income of the deceased was taken at Rs.2,080/- per month. 1/3rd was deducted towards his personal expenses and the multiplier of 7 was applied to compute the loss of dependency at Rs.1,17,600/-.

4. The learned counsel for the appellants has urged the following grounds at the time of hearing of this appeal:-

(i) The increase in minimum wages due to inflation and rise in price index be taken into consideration.

(ii) The personal expenses of the deceased be reduced from 1/3rd to 1/4.

(iii) The multiplier be enhanced from 7 to 13.

(iv) The compensation be awarded for loss of love and affection, loss of estate and funeral expenses.

5. The increase in minimum wages due to inflation and rise

in price index is not warranted in the present case because the Claims Tribunal has taken the minimum wages of Rs.881/- per month and has added Rs.1,200/- per month towards income from agriculture work.

6. According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the appropriate multiplier at the age of 50 years is 13 and the appropriate deduction towards the personal expenses is 1/4th as the deceased as left behind more than three legal representatives.

7. Following the aforesaid judgment of the Hon'ble Supreme Court, the multiplier is enhanced from 7 to 13 and the deduction towards personal expenses is reduced from 1/3rd to 1/4th. Rs.10,000/- is awarded towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

8. Taking the income of the deceased as Rs.2,080/- per month, deducting 1/4th towards his personal expenses, applying the multiplier of 13, adding Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, the total compensation is computed

to be Rs.2,63,360/- [(Rs.2,080 x 12 x 3/4 x 13) + Rs.10,000 + Rs.5,000 + Rs.5,000]

9. The appeal is allowed with costs. The award amount is enhanced from Rs.1,17,600/- to Rs.2,63,360/-. The learned Tribunal has awarded interest @12% per annum which is not disturbed on the original award amount of Rs.1,17,600/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization. The cost of the appeal is assessed at Rs.16,500/- based on the memo of fees filed by the counsel for the appellant at the time of hearing of this appeal. The shares of the appellants in the award amount shall be as under:-

Sat Parkash	-	20%
Anup Singh	-	20%
Kuldip Singh	-	6.66%
Minakshi	-	6.67%
Manisha	-	6.67%
Sudesh	-	20%
Jaro	-	20%

10. The learned counsel for the appellant and other counsels present in the Court point out that the Claims Tribunals do not award the cost of litigation in any matter as a result of which the claimants have to bear the legal cost out of the award amount. The learned counsels point out that the cost of litigation should be separately awarded to the claimants to be paid by the Insurance Companies. The learned counsels further point out

that after the disposal of the case by the Claims Tribunals, the Insurance Companies do not gracefully pay the legal fees even to their own counsels for various considerations which are not being put on record and the counsels suffer harassment/embarrassment in following up the legal fees after the disposal of the cases. It is submitted that the counsels appearing in the Court are officers of the Court and the agreed fees should be paid gracefully by all the parties.

11. Considering that the lawyers are the officers of the Court and they are entitled to their legal fees with dignity and so far as the claimants are concerned, they are entitled to the reasonable cost of litigation, it is desirable that wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel. The Insurance companies should also deposit the fee of their counsel by means of a separate cheque drawn in the name of their counsel with the Bank simultaneously along with the award amount to be released by the Bank to the Insurance Company's counsel.

12. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank A/c Sat Parkash, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days. The cost of Rs.16,500/- of this appeal be deposited by respondent No.3 by means of separate cheque in the name of O.P. Mannie, Advocate along with the deposit of the enhanced award amount. The legal fee of the counsel for respondent No.3 be also deposited with UCO Bank by means of a separate cheque in the name of Mr. Pankaj Seth, Advocate.

13. Upon the aforesaid deposit being made, the UCO Bank is directed to release 50% of the share amount to the appellants by transferring the same to their respective Saving Bank Account and the remaining amount be kept in fixed deposit for a period of one year with cumulative interest. The cheque towards the cost and legal fees be released by UCO Bank to the respective counsels for the appellants and respondent No.3.

14. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the respective appellants along with the photocopy of the FDRs.

15. On the expiry of the period of the FDRs, the maturity amount be paid to the appellants by transferring the same to the Saving Bank Account of respective appellants.

16. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

17. On the request of the appellants, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellants.

18. The appellants shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

19. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

20. The copy of this order be sent to all the Claims Tribunal and Additional District Judges dealing with MACT cases through Registrar (Appellate) of this Court.

21. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

MARCH 26, 2010
mk

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.609/2009

% Date of reserve : 3rd March, 2010
Date of decision: 12th April, 2010

MAYUR ARORA .....Appellant
Through : Mr. S.P. Jain and
Mr. Sumit Gupta, Advs.

versus

AMIT @PANGE & ORS. ...Respondents
Through : Dr. Arun Mohan, amicus curiae.
Mr. Kanwal Choudhary, Adv. for R-3.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

JUDGMENT

1. The appellant has challenged the award of the learned Tribunal whereby his claim petition has been dismissed.

2. FACTS OF THE CASE

2.1. The accident dated 21st June, 2008 resulted in grievous injuries to the appellant. The appellant was driving his two wheeler scooter No.DL-6SP-1632 while coming from Keshav Puram towards Sarai Basti. The appellant met with an accident

with Maruti Van No.DL-2C-R-6342 near Mochi Chowk, Keshav Puram.

2.2. The appellant suffered fracture on his right wrist, fracture on his right shoulder and peeled off skin of his left leg due to the accident. The appellant was treated at Parmarth Mission Hospital, Hindu Rao Hospital and Aggarwal Nursing Home.

2.3. The appellant appeared in the witness box as PW-2 and deposed with respect to accident having been caused due to rash and negligent driving of Maruti Van No.DL-2C-R-6342. The appellant also deposed with respect to the injuries suffered by him, treatment taken and the expenditure occurred by him. The appellant was cross-examined at length by counsel for respondent No.3. The appellant deposed in cross-examination that the road was about 10 feet wide and there was not much traffic. The appellant was coming from the service lane approaching towards the main road and had to take right turn on the main road. There was no red light signal and the appellant stopped the scooter at the corner upon seeing the van when he was hit by the van coming at the very fast speed.

2.4. S.I. Narender Singh, P.S. Keshav Puram appeared as PW-1 and proved the FIR No.134/2008 under Sections 279/337 as Ex.PW-1/1 and the MLC as Ex.PW-2/1. The FIR was registered

against the driver of the Van for rash and negligent driving.

2.5. No evidence was led by the respondents to rebut the evidence lead by the appellant.

3. FINDINGS OF THE CLAIMS TRIBUNAL

3.1. The learned Tribunal dismissed the claim petition holding that the appellant has failed to prove the rash and negligent driving by the driver of the Maruti Van. The learned Tribunal has given following reasons in para 9 of the award:-

3.2. The petitioner has not filed certified copy of criminal record such as site plan and mechanical inspection report of both the vehicles.

3.3. Had the certified copies of site plan being filed, the Tribunal would have considered as to how the accident had taken place.

3.4. Inspection report of both the vehicles would have also shown as to whether scooter of the petitioner was hit or not.

3.5. The petitioner was approaching the main road from service lane and there was no red light signal there. It was the duty of the petitioner while approaching the main road to ascertain whether any vehicle was going on the main road. Had he done so, accident should not have happened and, therefore, it was his fault due to

which accident had taken place.

3.6. When petitioner had approached the corner of service lane, he had already seen the van which was about 15 feet away and, therefore, it was his duty to stop the scooter and should have allowed the van to pass away since the van was going on the main road and petitioner was coming from service lane, for going on the main road.

3.7. The petitioner has failed to prove the fact that accident had taken place due to rash and negligent driving of the maruti van DL-2C-R-6342.

4. CONTENTIONS IN THIS APPEAL

4.1 The learned counsel for the appellant submits that the findings of the Claims Tribunal are contrary to the evidence on record. The learned counsel submits that appellant appeared in the witness box as PW-2 and deposed that the accident occurred due to the rash and negligent driving of the driver of the Maruti Van who was driving at a very fast speed. The appellant further deposed that he had seen the Maruti Van at a distance of 15 feet and had stopped the scooter and the Maruti Van hit the stationary scooter because of negligent driving. No evidence was led by the respondent to rebut the evidence led by the appellant. The FIR recorded by the police against the driver of the Maruti

Van also supported the appellant's case.

4.2. The learned counsel for the appellant next submits that the learned Tribunal has not conducted any inquiry as contemplated under Sections 168 and 169 of the Motor Vehicles Act, 1988. The learned counsel submits that if the Tribunal had any doubt about the rash and negligent driving of the Maruti Van, the learned Tribunal should have summoned the record of the criminal case to ascertain the truth instead of drawing an adverse inference against the appellant.

4.3. The learned counsel for the appellant further submits that the Claims Tribunal has disregarded the series of judgments passed by this Court in which this Court has time and again held that an inquiry under Section 168 of the Motor Vehicles Act is not same as a trial under the Code of Civil Procedure. The learned counsel submits that the scope of inquiry under Sections 168 and 169 of the Motor Vehicles Act should be elucidated for guidance of the Claims Tribunal.

5. THE NEED TO GO INTO DEPTH

5.1. There is a need to go deeper into the matter and clarify the legal position and more so after the adoption of a new stance by the police, and the Insurance Companies, as also the various pronouncements of this Court. It becomes necessary to do so, so

that there is no confusion, there is consistency and the practice and procedures in this field find development and application that serves the goal. Considering all this, vide order dated 23rd December, 2009, this Court appointed Dr. Arun Mohan, Senior Advocate and author of "Justice, Courts and Delays" as amicus curiae to assist this Court. Thereafter, the amicus curiae was heard at length, several other counsels also informally heard, and this judgment is being rendered.

6. SECTION 168 OF THE MOTOR VEHICLES ACT, 1988

6.1. The objective of this legislation being well known, does not require detailing and we can proceed straight with the statutory provision. Section 168 of the Motor Vehicles Act, 1988 provides that the Claims Tribunal shall hold an inquiry into the claim. Section 168 of the Motor Vehicles Act is reproduced hereunder:-

> "**Section 168. Award of the Claims Tribunal-**
>
> On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may

be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

7. SECTION 169 OF THE MOTOR VEHICLES ACT, 1988

7.1. Section 169 of the Motor Vehicles Act, 1988 provides that in holding the inquiry under Section 168, the Claims Tribunal may follow such summary procedure as it thinks fit. Section 169 of the Motor Vehicles Act is reproduced hereunder:-

"**Section 169. Procedure and powers of Claims Tribunals**-

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses

and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry."

8. DELHI MOTOR ACCIDENTS CLAIMS TRIBUNAL RULES, 2008

8.1. The Delhi Motor Accidents Claims Tribunal Rules, 2008, notified by Government of NCT of Delhi on 13th July, 2009, provide the procedure to be followed by the Claims Tribunal. Some of the relevant Rules are as under:-

"Rule 3 - Duties of investigating police officer in motor accident cases.-

(1) Notwithstanding anything contained to the contrary in any other rules in force, it shall be the duty of the investigating police officer, as expeditiously as possible to-

(a) get the scene of accident photographed from such angles as to clearly depict, and in case of inability to do so, prepare a site plan, drawn to scale, as to indicate the lay-out and width, etc. of the road(s) or place, as the case may be, the position of vehicle(s), or person(s), involved, and such other facts as may be relevant so as to preserve the evidence in this regard, interalia for purposes of proceedings before the Claims Tribunal;

(b) gather full particulars of the insurance certificate /policy in respect of the motor vehicle involved in the accident and to require the

production of documents mentioned in sub-section (1) of section 158 of the Act, and thereupon either to take the same in possession against receipt, or to retain the photocopies of the same, after attestation thereof by the person producing the same;

(c) verify the genuineness of the documents mentioned in clause (b) by obtaining confirmation in writing from the office /authority purporting to have issued the same;

(d) submit detailed report regarding an accident to the Claim Tribunals, in Form "A" by not later than thirty days of the receipt of notice in Form "B", accompanied by requisite documents which shall include copy of report under section 173 of the Code of Criminal Procedure, 1973(2 of 1974), medico legal certificate, post-mortem report (in case of death), first information report, photographs, site plan, photocopies of documents mentioned in clause (c), report regarding confirmation of genuineness thereof, if received, or otherwise action taken;

(e) furnish to the applicant information and particulars about the accident in Form "A" within thirty days, on receiving the application in Form "C" by the person who wishes to make an application for compensation and who is involved in an accident, or his next of kin, or the legal representative of the deceased, or the insurance company, as the case may be.

Provided that such information shall be given to the insurance company on payment of a fees of rupees ten only per page;

(f) not to release and impound the vehicle involved in the accident, when it is found that it is not covered by policy of insurance of third party risks, taken in the name of the registered owner, or when the registered owner fails to furnish copy of such insurance policy, and bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred.

(g) report to the Magistrate mentioned in clause (f), as to why the registered owner has not been prosecuted for offence punishable under section 196 of the Act, where such prosecution has not been preferred, despite existence of facts constituting such an offence.

(2) The duties enumerated in sub rule (1) shall be construed as if they are included in section 60 of the Delhi Police Act 1978 (34 of 1978) and any breach thereof shall entail consequences envisaged in that law.

Rule 4 - Duties of the registering authority.- It shall be the duty of the concerned registering authority to-

(a) submit a detailed report in Form "D" to the Claims Tribunal regarding a motor vehicle involved in an accident or licence of the driver thereof within fifteen days of the receipt of direction in Form "E";

(b) furnish within fifteen days, the requisite information in Form "D" on receiving the application in Form "F", by the person who wishes to make an application for compensation or who is involved in an accident arising out of use or his next of kin, or to the legal representative of the deceased or to the insurance company, as the case may be.

Provided that information shall be given to the insurance company on payment of rupees ten only per page.

Rule 5 - Duties of the insurance company.- It shall be the duty of the divisional manager of the insurance company, as expeditiously as possible, to-

(a) move an application in Form "C" before the investigating police officer with prescribed fees and gather full information about the accident, at the earliest, after receiving information about it, or on receipt of notice from the Claims Tribunals under rule 13;

(b) ascertain and verify facts about insurance of motor vehicle(s) involved in the accident and confirm the same to the Claims Tribunal within thirty days of receiving notice of the claim case;

(c) move application before the concerned registering authority in Form “F” and gather information about the motor vehicle(s) involved, and the driving licence(s) held by the driver(s) thereof as per details mentioned in Form“D”;

(d) deposit with the written statement in the Claims Tribunal, the amount equivalent to the compensation, awardable on the principle of no fault liability under section 140 of the Act in such cases where the information received in Form “A” and Form “D” confirms death or permanent disability to have been caused as a result of the use of the motor vehicle covered by the insurance certificate/policy issued by it.

Rule 6 - Prohibition against release of motor vehicle involved in accident.-

(1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in subrule(1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of

three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

Rule 7 - Presumption about reports.- The contents of reports submitted to the Claims Tribunal in Form "A" and Form "D" by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.

Rule 8 - Applications.-

(1) Every application for payment of compensation shall be made in Form "G" and shall be accompanied by as many copies, as may be required, to the Claims Tribunal having jurisdiction to adjudicate upon it.

(2) There shall be appended to every such application:-

(a) an affidavit of the applicant to the effect that the statement of facts contained in the application is true to the best of his/her knowledge/belief, as the case may be, and further if the applicant(s) has/have earlier preferred any claim petition with regard to the same cause of action, and if so, what was the result thereof;

(b) all the documents and affidavits for the proof thereof, and affidavits in support of all facts on which the applicant relies in context of his/her claim, entered in a properly prepared list of documents and affidavits:

Provided that the Claims Tribunal may not allow the applicant to rely in support of his/her claim, on any

document or affidavit not filed with the application, unless it is satisfied that for good or sufficient cause, he/she was prevented from filing such document or affidavit earlier;

(c) proof of identity of the applicant (s) to the satisfaction of the Claims Tribunal, unless exempted from doing so for reasons to be recorded in writing by it;

(d) passport size photograph(s) of the applicant(s) duly attested by the advocate on record.

(e) reports obtained in Form "C" and Form "D" from investigating police officer, and registering authority; and if no such report(s) have been obtained reasons thereof;

(f) medical certificate of injuries, or the effect thereof, other than those included in Form "C".

(3) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred:-

(a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;

(b) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and

(c) connection of persons mentioned in clause (b), if any with the applicant.

(4) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks.

(5) Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

Rule 9 - Police Reports under sub-section (6) of section 158 of the Act and action thereon.-

(1) The report in terms of sub-section (6) of section 158 of the Act by the police shall mutatis mutandis be in Form "A".

(2) On receipt of report mentioned in sub-rule (1) , the Claims Tribunal shall go through the same and may call for such further information or material as considered necessary for proper and effective action in accordance with subsection (4) of section 166 of the Act.

(3) The Claims Tribunal after examination of the report, further information/material, if called for, shall register the claim case thereon and, then, issue notice for appearance to all parties concerned, which would include the victim(s) of the accident, or his/her legal representative(s), as the case may be, driver, owner and insurer of the vehicle(s) involved, in Form "H".

(4) On receipt of notice, the parties mentioned in the forgoing provision would be required to appear and declare through affidavit, if any claim case had either been preferred, or was being preferred in respect of the same cause of action, and if so, the police report treated as claim case would be tagged to such claim case preferred independently by the parties.

(5) If the person(s) injured, or legal representative(s) of the person(s) deceased do not appear in response to the notice aforementioned in the manner indicated above, the Claims Tribunal may presume that the said parties were not interested in pursuing the claim for any compensation in such proceedings, and on such presumption it shall close the case.

(6) Unless the police report treated as claim case stands tagged to independent claim case preferred by the parties themselves, the Claims Tribunal shall call upon the person(s) injured or legal representative(s) of the person(s) deceased, as the case may be, and who may have appeared in response to the notice, to submit statement of facts regarding compensation, if any claimed by them, which statement of facts shall be along the lines required to be furnished in application in Form "G".

(7) If statement of facts about compensation claimed and basis thereof are furnished by the parties in the manner indicated in sub-rule(6), the case shall be further proceeded with in the same manner as required to deal with applications moved by the parties for compensation directly before the Claims Tribunal.

(8) If after statement of facts about compensation claimed has been furnished by the party, which subsequently commits default in appearance, the provisions of Order IX of the Code of Civil Procedure, 1908(5 of 1908) would apply:

Provided that in case accident in question involves more than one vehicle and persons connected to all such vehicles stake claim for compensation, the police report treated as claim case shall be presumed to be a claim case preferred by each of them and absence by any one or more of such parties shall not prejudice or affect the claim of the party which continues to appear.

Rule 10 – Examination of applicant.- On receipt of an application under rule 8, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing.

Rule 11 - Summary disposal of application.- The Claims Tribunal may, after consideration of the application and statement, if any, of the applicant

recorded under rule 10, dismiss the application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith.

Rule 13 - Notice to parties involved.- If the application for claim is not dismissed under rule 11, the Claims Tribunal shall send to the opposite parties a copy of the application along with all the documents and affidavits filed by applicant under rule 8 together with a notice in Form "I" of the date on which it will hear the application, and may call them upon to file on that date a written statement as per rule 14 in answer to the application:

Provided that, if documents filed by the applicant are voluminous, and insistence on providing copies thereof would be unnecessarily expensive or cumbersome, the Claims Tribunal may dispense with the requirement to send copies thereof to the opposite parties.

Rule 14 - Appearance and examination of the parties.-

(1) The person against whom the applicant claims relief (hereinafter referred to as 'opposite party') shall at or before the first hearing, or within such further time as the Claims Tribunal may allow, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(2) The opposite party shall file with his written statement, all the documents and affidavits for the proof thereof and also affidavits in support of all facts on which he relies in context of his defence of the application, duly entered in a properly prepared list of documents and affidavits and shall give to the applicant copies of the written statement, documents and affidavits, provided that the Claims Tribunal may not allow the opposite party to rely in support of his defence on any document or affidavit

not filed along with the written statement unless it is satisfied that, for good or sufficient cause, he was prevented from filling such document or affidavit earlier.

(3) If the opposite party contests the claim, the Claims Tribunal may, and if no written statement has been filed, it shall, proceed to examine him upon the claim and shall reduce the substance of the examination to writing.

(4) The Claims Tribunal may also require the opposite parties to furnish the following information:-

(a) full particulars of all earlier accidents in which such party may have been involved, and in which the claims have been awarded at least in part.

(b) the amount of compensation paid in such earlier accidents, the name(s) and address(es) of the victims and of the persons who paid the damages; and

(c) relation of persons mentioned in clause (b), if any, with the opposite party.

Rule 15 - Local Inspection.-

(1) The Claims Tribunal may, at any time during the course of a proceeding before it, visit the site at which the accident occurred for the purpose of making local inspection or examining any persons likely to be able to give information relevant to the proceedings.

(2) Any party to a proceeding or representative of any such party, may accompany the Claims Tribunal for a local inspection.

(3) The Claims Tribunal after making a local inspection shall note briefly in a memorandum any facts observed, and such memorandum shall form part of the record of proceeding.

(4) The memorandum referred to in sub-rule (3) may be shown to any party to the proceedings who desires to see it and a copy thereof may, on application, be supplied to any such party.

(5) The Claims Tribunal may, if any journey is undertaken for the purpose specified in this rule at the instance of a party, require the party, to deposit beforehand an amount equivalent to the actual expenses likely to be incurred by it and its staff for the purpose, and draw only the amount so deposited by the parties to meet all the incidental expenditure in connection with such journey.

Rule 16 - Inspection of the vehicle.- The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produced by the owner for inspection at a particular time and place to be mentioned by it, in consultation with the owner.

Rule 17 - Power of summary examination.- The Claims Tribunal during the local inspection or at any other time at a formal hearing of a case pending before, it may, examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not.

Rule 18 - Power to direct medical examination.- The Claims Tribunal may, if it considers necessary, direct, in Form "J", any medical officer or any board of medical officers in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.

Rule 19 - Co-opting of persons during inquiry.-

(1) The Claims Tribunal may if it thinks fit, co-opt one or more persons possessing special knowledge with respect to any matter relevant to the inquiry, to assist in holding the inquiry.

(2) The remuneration, if any, to be paid to the person(s) co-opted shall in every case be determined by the Claims Tribunal."

Rule 25 - Obtaining of supplementary information and documents.- The Claims Tribunal shall obtain whatever supplementary information and documents, which may be found necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.

Rule 29 - Adjournment of hearing.- If the Claims Tribunal finds that an application cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing.

Rule 31 - Enforcement of award of the Claims Tribunal.- Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908(5 of 1908), as if the award where a decree for the payment of money passed by such court in a civil suit.

Rule 32 - Vesting of powers of Civil Court in the Claims Tribunal.- Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908)."

9. RELEVANT JUDGMENTS

The relevant judgments of the Hon'ble Supreme Court, this Court and other High Courts on the scope of inquiry and other related matters under the Motor Vehicles Act, 1988 with a few excerpts are as under:-

9.1. **Jai Prakash Vs. National Insurance Company, 1(2010) ACC 1 (SC) –**

The Hon'ble Supreme Court has held as under:-

"Directions to Police Authorities

8. The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 ('AIR' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim {in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing."

"Directions to the Claims Tribunals

12. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act.

13. For complying with Section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in

the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any 'Police Officer - Advocate -Doctor' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in General Manager, KSRTC v. Susamma Thomas MANU/SC/0389/1994 : 1994 (2) SCC 176.

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under

Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

14. The aforesaid directions to the Tribunals are without prejudice to the discretion of each Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

Suggestions for Insurance Companies

15. In cases of death, where the liability of the insurer is not disputed, the insurance companies should, without waiting for the decision of the Motor Accidents Claims Tribunal or a settlement before the Lok Adalat, endeavour to pay to the family (Legal representatives) of the deceased, compensation as per the standard formula determined by the decisions of this court.

16. In cases of injuries to any accident victim, where the liability is not disputed, the insurer should offer treatment at its cost to the injured, without waiting for an award of the Tribunal. If insurance companies can meet the bills for treatment of those who have taken a medical insurance policy, we see no reason why they should not extend a similar treatment to the accident victims of vehicles insured with them.

17. In countries like United Kingdom, the percentage of motor accident claims, with reference to the accidents is very low. This is because

immediately after being notified of the accident, the insurer makes its own enquiries and satisfies itself about its liability and voluntarily assesses and pays the compensation to the victim. Only where the insurer denies the claim or where the victim is not satisfied with the quantum of compensation paid, the matter goes to court. There should not adopt such a procedure. In death cases, the calculation of compensation is now standardized by several decisions of this court [See for example: Sarla Verma Vs Delhi Transport Corporation – 2009 (6) SCC 121]. The insurers can either by relying upon the police report (AIR) or by enquiring with the family or the employer of the deceased, ascertain the three inputs required for calculation of the compensation, the is, age of the deceased, income of the deceased and number of dependent family members. With these particulars, the insurers can easily calculate the compensation and offer a compensation, either a lump sum or an annuity. Similarly in cases of injuries, the insurers can offer treatment in hospitals approved by it and meet the expenses or pay the bills, or if the victim has already undergone the treatment, reimburse the cost of treatment. It can also reimburse other items of special damages, the damages for pain suffering, which is also standardized in several decisions of this court. By such voluntary payment there will be all round benefits. The insurers save interest and litigation cost and discharge their obligation to the society. The victims will be relieved from financial hardship and benefit from timely effective treatment. Burden on courts will be reduced and judicial man power can be diverted to more complex cases.

18. To protect and preserve the compensation amount awarded to the families of the deceased victim special schemes may be considered by the insurance companies in consultation with the life Insurance Corporation of India, State Bank of India or any other Nationalized Banks. One proposal is for formulation of a scheme in consultation with Nationalized Banks under which the compensation is kept in fixed deposit for an appropriate period and interest is paid by the Bank monthly to the claimants

without any need for claimants having to approach either the court or their counsel or the Bank for that purpose. The scheme should ensure that the amount of compensation is utilized only for the benefit of the injured claimants or in case of death, for the benefit of the dependent family. We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court :

I. The fixed deposit shall be automatically renewed till the period prescribed by the Court.
II. The interest on the fixed deposit shall be paid monthly.
III. The monthly interest shall be credited automatically in the saving account of the claimant.
IV. Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.
V. The original fixed deposit receipt shall be hand over to the claimant at the end of the fixed deposit period.
VI. Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.
VII. No cheque book shall be issued to the claimant without permission of the court.
VIII. No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the court.
IX. The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant; the bank shall provide the said facility.

19. The Insurance companies may also consider offering an annuity instead of lump sum compensation. They may prepare an annuity scheme with the involvement of Life Insurance Corporation of India or its own actuaries, under which they can pay a monthly annuity to the widow

(for life) and to minor children (till they attain majority) and in addition a lump sum at the end of 20 or 25 years to the widow. The benefit of such annuity scheme may also be extended to victims who are permanently disabled in accidents. Once such schemes are in place, the victims and the tribunal will have some choice in the manner of payment of compensation.

20. Whenever the insurance companies find that the driver of the insured vehicle possessed fake/forged driving license, they should lodge a complaint with the concerned police for prosecution. This will reduce the incidence of fake licenses and increase the road travel safety."

9.2. **New India Assurance Company Limited vs. Anita, order dated 6th January, 2010 in SLP (Civil) No.35537/2009–**

The Hon'ble Supreme Court has held that the summary procedure under Sections 168 and 169 of the Motor Vehicles Act, 1988 should be consistent with the rules of natural justice but the Claims Tribunal is not bound by the technical rules of evidence. The findings of the Hon'ble Supreme Court are reproduced hereunder:-

"We may also observe that a Tribunal constituted under the Act is not a regular Court and it is required to decide applications filed for compensation by adopting a summary procedure consistent with the rules of nature justice (Section 168 and 169(1) of the Act). By virtue of Section 169(2), the Tribunal is clothed with the powers of Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects but there is nothing in the Act from which it can be inferred that the Tribunal is bound by the technical rules of evidence. Therefore, the Tribunal cannot be faulted for having

allowed the parties to lead secondary evidence. Rather, that was the only course available to the Tribunal for doing justice to the parties because the original file was lost in 1994 and the case had to be decided on the basis of reconstructed file."

9.3. **Rajesh Tyagi vs. Jaibir Singh, FAO.No.842/2003–**

This Court has given various directions to the Insurance Companies on 8th June, 2009 and 5th November, 2009. These may be summarised as under:-

9.3.1. With the enforcement of Section 158(6) of the Motor Vehicles Act, the SHO of the Police Station is serving the copy of the Accident Information Report along with all the relevant documents on the Insurance Company at the time of filing of the Accident Information Report with the Claims Tribunal. The Insurance Companies now have sufficient notice of the claim and they can verify the same and settle the claim.

9.3.2. The Insurance companies have been directed to investigate the claim upon receipt of the AIR in terms of their Third Party Claim Procedure Manual and to submit their reply along with the copy of the investigation report and the computation of compensation according to them before the Claims Tribunals within 60 days wherever the accident, driving licence, permit, evidence and other documents relate to Delhi and within 90 days where the documents relate to outside Delhi. If there is no defence under Section 149 of the Motor Vehicles Act, 1988, the Insurance Companies have been directed to deposit the admitted amount according to their computation with their reply before the Claims Tribunal. The copy of the AIR furnished by the Police to the Insurance Company shall be sufficient notice of the institution of the claim petition before the Claims Tribunal.

9.3.3. In order to streamline the system, it is directed that henceforth immediately upon receipt of intimation of the claim, the Insurance Companies shall first appoint a competent designated officer who shall be responsible for processing and taking a decision in respect of that claim and the name of such officer shall be disclosed in the reply/written statement to be filed before the Claims Tribunal. The designated officer so appointed shall appoint an Investigator and after receipt of report of the Investigator, the designated officer shall take the reasoned decision in writing as to the amount payable to the claimants in accordance with law. The decision of the designated officer on the claim shall be filed along with the reply/written statement before the Claims Tribunal. If the learned Tribunal comes to the conclusion at the time of deciding the claim that the designated officer had delayed or defeated the claim, appropriate order shall be passed by the learned Tribunal in respect of the designated officer at the time of passing the award.

9.4.4. With respect to the pending cases relating to Motor Accident Claims in Delhi, all the Insurance Companies are directed to appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned order in writing about the amount payable in accordance with law. The order of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the order of the designated officer.

9.4. **Abdul Subhan vs. State (NCT of Delhi), 2007 CriLJ 1089, 133(2006)DLT562–**

This Court has issued following directions for proper investigation of road accident cases:-

“13. Before I part with this case I would like to make it known that I have come across various cases of a similar nature involving allegations of rash and/or negligent driving in which I find that the investigations carried out are below par. It is a well-known fact that road accidents are on the rise and many of these accidents result in fatalities. It is also becoming more and more apparent that the investigating agencies are not investigating such accidents in a proper and scientific manner. The result and consequence of which is that even those persons who might have been guilty for having committed offences under Sections 279/304A IPC are being acquitted on the basis of benefit of doubt or lack of evidence. This is not a very happy situation. In cases of road accidents particularly those which result in fatalities, the investigation should be carried out in a swift and scientific manner.

13.1. In most cases I find that the site plans are not produced. Even the site plan that is produced is of a very unsatisfactory nature. It is, therefore, imperative that the investigating officer should be provided with maps of the roads drawn to scale so that accurate site plans can be produced in evidence for the appreciation of courts. The exact point of impact as well as tyre skid marks and the point at which the vehicles come to rest after the collision should be demarcated clearly. The observations with regard to the length of the tyre skid marks of the vehicles involved in the impact go a long way in indicating the speeds at which the vehicles were traveling. This would enable the courts to examine the evidence in a much more objective manner and the courts would not be faced with vague and subjective expressions such as "high-speed".

13.2. The mechanical inspection reports that are prepared are also, I find, in a majority of cases, of a very superficial and cursory nature. The inspection ought to be carried out by qualified personnel who are able to indicate in their reports the exact physical conditions of the vehicles. They should be able to

point out with exactitude the damage suffered by the vehicles as a result of the impact. The mechanical inspection report should indicate all the tell-tale signs of the collision such as the paint of one vehicle rubbing off on the other. It should also indicate as to whether the vehicles were mechanically sound or not prior to the impact so as to enable the court to arrive at a conclusion as to whether the collision took place due to human rashness or negligence or mechanical failure beyond human control.

13.3. As a rule, photographs ought to be taken not only of the vehicles involved in the collision but also of the site and surrounding areas so that the exact topography can be easily discerned by courts.

13.4. The prevalent weather conditions must be noted by the investigating officer. This would go to establish as to whether the road was slippery due to rain; whether there was poor visibility due to fog or mist etc.

13.5. Furthermore, the path of movement of the vehicles must be sought to be established in the course of investigation and not be left open to ambiguity and doubt as in the present case.

13.6. The drivers of the vehicle involved must also be subjected to tests to reveal whether they had consumed any intoxicants.

13.7. Proper investigation of such accidents would go a long way in aiding the criminal justice system in convicting those who are guilty and acquitting those who are innocent. A shoddy investigation will only point in one direction and that is in the acquittal of all whether they are guilty or whether they are innocent. Because, no criminal court would (and ought not to) convict any person merely on the basis of conjectures, assumptions, probabilities. All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case

which when taken objectively would lead to the inescapable conclusion that a conviction is maintainable."

9.5. **New India Assurance Co. Ltd. vs. Kashmiri Lal, AIR 2006 Delhi 112 -**

This Court has given the following directions to the Claims Tribunals:-

"5. In my view the victims of motor accidents are either persons disabled or are legal heirs of the deceased and the compensation to the such helpless victims of such accidents is indeed an ameliorative and social piece of legislation and accordingly such relief cannot be bound down by a narrow and constricted meaning of the Act and ought to receive a liberal interpretation. Section 174 in my view is only one of the modes of recovery and does not preclude other methods. Section 168(3) mandates that the awarded amount is to be deposited within 30 days of the pronouncement of the award. In any event a public sector Insurance company cannot be heard to urge that it would not pay amounts in respect of an Claims Tribunal award which is enforceable except through the mode of arrears of land revenue. This plea is wholly untenable in view of the time limit of 30 days prescribed under Section 168(3) of the Act. Consequently, it is necessary to find ways and means to ensure expeditious payment of compensation payable as per the award of a Tribunal in accordance with the mandate of Section 168(3).

6. This writ petition has been filed under Article 227(1) of the Constitution which reads as follows:-

"227. Power of superintendence over all courts by the High Court.--[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]"

Thus since this Court has powers of superintendence over the Claims Tribunals within Delhi, it is competent to issue general directions which govern the exercise of powers by such Tribunals.

7. In view of the above pleas, the following directions are issued which are required to be followed by all Motor Accidents Claims Tribunals.

(a) While filing the written statement, the concerned insurance company is required to furnish details of its Bank account and the Bank to the Court. In case a written statement has already been filed in an existing claim, all insurance companies are required to furnish the name of the concerned Bank and their account numbers within 3 months from today.

(b) Within a period of 30 days of the award, which is the period prescribed for depositing the amount under Section 168(3) of the Act to the High Court, the insurance company is required to tender the payment awarded by the Claims Tribunal by issuing cheques in the name of the claimant(s) unless and until a stay order has been obtained from the High Court. The names of the claimants who are to be paid the amounts along with the amount payable is required to be stated in the award.

(c) If after the expiry of 90 days which is the prescribed period for preferring an appeal under Section 173(1) of the Act, payment of the amount awarded by the Claims Tribunal has not been made, notice must be issued to the Bank named by the Insurance Company directing such Bank to deposit the cheque drawn in the name of the claimant/claimants legally entitled as per the award covering the amount(s) as per the Claims Tribunal award within a week of receipt of such orders and cheques should be retained for being given to the claimant.

(d) Once the amount is deposited by cheque as per the aforesaid procedure the Claims Tribunal is

required to ensure that within a period of six weeks thereafter the amount is disbursed to the claimants under the supervision of the Presiding Officer by issuing the said cheque to the claimant so that the claimants are not put to undue harassment.

(e) In case for some reason it is not possible to make the payment to the claimant within six months of the issue of the cheques in the name of the claimant, then the Claims Tribunal should ensure that such cheques are returned to the Insurance Companies in lieu of fresh cheques drawn in favor of the appropriate account of the Claims Tribunal which are required to be deposited in an interest bearing short term fixed deposit for a six monthly period by the Claims Tribunal.

(f) In case the Claims Tribunal has to resort to the procedure prescribed under sub para (c) above which requires it to secure the amount through the banks upon a failure of the insurance company to deposit the amount within the time stipulated by Section 168(3) and the above procedure, cost of Rs. 5000/- payable to the claimant is required to be imposed on the Insurance Companies.

(g) If directions given by the Claims Tribunal to the Banks are not complied with, the Claims Tribunal may order freezing of Bank Accounts to the extent covered by the award."

9.6. **UOI vs. Nanisiri, MAC.APP.No.682/2005 decided on 13th January, 2010, MANU/DE/0218/2010–**

This Court has issued the following directions to the Claims Tribunals for the protection of the award amount:-

"7. It has been brought to the notice of this Court that after the deposit of cheques by the Insurance Companies with the Claims Tribunal, no intimation is given to the claimants and in many cases, by the time, the claimant gets the information of deposit of the cheque, the cheque has already expired. It is

stated that in many cases, the cheques have also been lost like in the present case. This problem can be resolved by directing the Insurance Companies to directly deposit the award amount with the bank with the direction to the bank to keep specified amount in fixed deposit in terms of the award and release the balance amount by transferring the same to the Saving Bank Account of the victim/claimant. All the Motor Accident Claims Tribunals are, therefore, directed to henceforth direct the Insurance Companies to directly deposit the award amount in the bank within 30 days with further directions as to the disbursement of the same in terms of the award and the case be kept pending till the compliance is placed on record. The directions given by this Court for deposit and disbursement of the award amount have been reaffirmed by the Hon'ble Supreme Court in the order dated 17th December, 2009 in SLP(C) No.11801-11804/2005…"

9.7. **New India Assurance Co. Ltd. vs. Ganga Devi, MAC.APP.135/2008 decided on 20th January, 2010–**

This Court has issued the following directions to the Claims Tribunals for the protection of the award amount:-

"15. It has been pointed out by the learned counsel for the claimants that the Claims Tribunal are passing directions for releasing part of the award amount and the remaining amount is kept in fixed deposit for a long period due to which the claimants are unable to meet their exigencies and have to approach the Tribunal again and again for release of the award amount. It is suggested by learned counsel for the claimants that a direction be given to the Claims Tribunal to keep the amount in fixed deposit in such a manner that the claimants get the award amount in a phased manner which will take care of their exigencies such as illness, marriage of children, education etc.

16. The Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years.

17. If the family of the claimants have school/college going children, the maturity period of the fixed deposit receipts be kept preferably in the month of 'March' every year so that the family is able to meet the annual expenses towards the admission and tuition fee of the children."

9.8. **Resham vs. Harish Kaushik, MAC.APP. No.560/2007 decided on 22nd February, 2010–**

This Court has issued the following directions to the Claims Tribunals for protection of the award amount:-

"4. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.
5. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.
6. No cheque book be issued to appellant No.1 without the permission of this Court.
7. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

8. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
9. Half yearly statement of account be filed by the Bank in this Court."

9.9. **Sobat Singh vs. Ramesh Chandra Gupta, MAC.APP.No.422/2009 decided on 23rd February, 2010–**

This Court has issued the following directions to the Claims Tribunals for streamlining the system:-

"(i) Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

(ii) At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

(iii) If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The

photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

(iv) The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

v) If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal, 2007 ACJ 688**.

(vi) The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

a) Date of award
b) Case number

c) Title of the case
d) Award amount
e) Date of deposit of the award amount
f) Date of notice of deposit by the depositor.
g) Date of notice of deposit by the Tribunal.
h) Amount of interest upto date of notice of deposit.
i) Whether award amount and complete interest deposited.
j) Balance outstanding interest.
k) Remarks (Action taken to recover the balance interest)

(vii) In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

(viii) In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.

(ix) In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days."

9.10. New India Assurance Co. Ltd. vs. Rakesh Ahuja, MAC.APP.No.236/2009 decided on 23rd December, 2009, MANU/DE/3421/2009–

This Court has issued the following directions to curb the menace of fake driving licences:-

"(i) All complaints relating to fake driving licence by the Insurance Company and/or owner of a vehicle be made in writing to DCP/Crime, Police Headquarter, I.P. Estate, New Delhi. DCP/Crime has nominated Mr. Mohan Singh Dabas, ACP/Anti-Auto Theft Squad, Crime Branch, Phone No.011-26925457 as nodal officer to monitor the fake driving licence

cases.

(ii) All the Insurance Companies shall make a complaint whenever they get information of fake driving licence. The Insurance Companies shall also compile the data of fake driving licences in respect of accidents which have occurred in the last three years, i.e., after 1st January, 2007 in Delhi and shall make a complaint to the DCP, Crime Branch, Delhi Police in the format given in para -11 (ii) of the order dated 3rd December, 2009. The complaint shall be accompanied by the copy of the fake driving licence. The complaint shall be transmitted electronically to Delhi Police at the E-mail ID acp-scrb-dl@nic.in. along with the scanned copy of the licence said to be fake. The complaint shall also be made in writing duly signed by the authorized officer of the Insurance Company.

(iii) The Delhi Police shall take the following action in respect of the aforesaid complaints:-

(a) If the case is pending investigation, then to ensure further investigation into the issue of fake driving licence in the concerned Police Station.

(b) In pending trial cases, to ensure filing of supplementary charge-sheet on this aspect.

(c) The cases in which the trial has already been completed, to ensure registration of fresh FIR by the concerned police station.

(iv) ACP/Anti Auto theft shall maintain record of all such complaints and action taken by police.

(v) Delhi Police shall create a database of information regarding fake licences and licence holders received from Insurance Companies or other sources.

(vi) Whenever the police registers an FIR against a person for driving with a fake licence, particulars of

that FIR be entered in the entry against the information received.

(vii) The office of DCP/Crime shall prepare and maintain a tabulator chart (database) of the information received and look for any 'patterns' within it. It shall take such action according to law against those concerned as it considers proper.

(viii) The police shall place the information of those cases where the Driving Licence produced was found to be fake on a website so that the Transport Authorities in other States can access it and be armed with this information before issuing a Driving Licence for such a person in that State."

9.11. **Saramma Scaria Vs. Mathai, 2003 ACJ 213–**

The Division Bench of Kerala High Court has given the following directions to the Claims Tribunals:-

"11. In the wake of the above circumstances we are inclined to set aside the order of the Tribunal and remit the matter back to the Tribunal for de novo consideration. However, we are inclined to give certain directions to the Claims Tribunals for future guidance and compliance.

12. The Claims Tribunal may, after considering the application and the statement, if any could dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.

13. Tribunal on evidence finds that a claim petition is frivolous or made on experimental basis would dismiss the same with compensatory costs and in appropriate cases would take action against vexatious and frivolous litigations.

14. Tribunal if finds there is no reason to dismiss the application summarily will have to frame issues. When issues are framed the Tribunal is duty bound

to answer the issues framed and decide the claim petition on merits on the basis of the report made available under Section 158(6) read with Rule 378(5) of the Rules.

15. Tribunal even in the absence of any evidence adduced by the claimants could decide the issues on the basis of the FIR, scene mahazar, wound certificate and other materials applying the principle of res ipsa loquitur. This principle as such may not dispense with the need to prove a fact alleged by a person but the Tribunal after considering the police report, objection filed by the opposite party if any, can reach a conclusion though no oral and documentary evidence was adduced by the claimant. Of course in appropriate cases Tribunal could insist the appearance of injured person so as to get itself satisfied of the claim. Culpability could be presumed if Tribunal satisfied on the basis of the available materials that the claim is genuine and award adequate compensation.

16. Tribunal may if it considers necessary, direct any Medical Officer in a Government Hospital or in a Medical College Hospital or any Board consisting of such Medical Officers to examine the injured and issue disability certificate indicating the degree and extend of the disability, if any, sustained as a result of the accident. Tribunal also in appropriate cases depending upon the facts of the case should see that the disability certificate be produced before the Tribunal to be issued by specialist doctor (Government or Private) with not less than 10 years standing in the specialty, who had not treated the patient in the acute stage after the accident. In this connection we may refer to Government order dated 15.5.1997 which says that such a condition is to ensure unbiased and accurate assessment of the permanent disability.

17. Claims Tribunal shall see that it shall obtain all information from the police, medical and other authorities and shall not drive the injured or the claimants to the police stations or hospitals so as to

get copies of those reports. On request and paying necessary fees relevant reports pertaining to the case obtained from the police station or hospital should be furnished to the claimants. If it is found that the party is financially poor, care should be taken that the expenses be met by the Government.

18. Office of the Claims Tribunal should help the injured person or the claimants in appropriate cases to file proper application in Form No.A claiming compensation before the Tribunal. Special interest should be taken in cases where the party is not represented by legal practitioner.

19. Office of the Tribunal should impress upon the applicants about the statutory provision it would not be necessary that the claimant himself should conduct the proceeding. He could entrust the case to an agent duly authorised by him or a legal practitioner. Tribunal should also ascertain from the injured or the claimants as to whether any injustice has been meted out to them from any quarters at any stage of the proceedings.

20. Tribunal should also take care to inform the Bar Council of Kerala if the legal practitioner appointed by claimants fails to appear before it. The Bar Council of Kerala should take appropriate steps depending upon the merits of each case where there is non-appearance of the counsel.

21. Tribunal should show compassion when the claimant or the injured are examined before it. Unnecessary and inconvenient questions should not be put either by the Tribunal or legal Practitioners considering the fact that the injured as well as claimants are in considerable financial and psychological pressure. The approach of the Tribunal should be to help the persons in distress and not to scare them away from the corridors of Tribunal. Tribunal should bear in mind the fact that the claimants or the injured are not seeking any charity. Claimants would feel that Tribunal is a place of comfort and solace and not a place of harassment.

22. Certificate issued by Medical Officer if not objected to may be marked in evidence. If marked on admission without reservation, the contents are not only evidence but are taken as admitted, the result being the contents cannot be challenged either by way of cross-examination or otherwise. Therefore the certificates issued by doctors which are not objected to by the other side could be relied upon by the Tribunal in awarding compensation. In doubtful cases the Tribunal can summon the doctor.

The above mentioned directions should be scrupulously observed by the Motor Accidents Claims Tribunals in the State. Communicate a copy of the judgment to all the Motor Accidents Claims Tribunals in the State for information".

9.12. **Rekha vs. Raj Balam Rajbhar, MAC.APP.No.576/2007 decided on 9th December, 2009 -**

This case related to death of a 8 year old girl where mother of the deceased girl filed the claim petition. The appellant was from the lowest strata of the society. The Claims Tribunal dismissed the claim petition on the ground that the appellant could not produce the document to show her relationship with the child. The Claims Tribunal did not conduct any inquiry into the matter. This Court, in appeal, directed the SDM to conduct the inquiry. The SDM conducted the detailed inquiry and submitted the report that the appellant was the mother of the deceased child which was accepted by this Court and the award was passed.

9.13. **Rukmani Jain Ahri L. Sarikamnth Nayak, MAC.APP.No.524/2009 decided on 14th January, 2010-**

The accident resulted in the death of a man in road accident in Tamil Nadu. The legal representatives filed the claim petition in Delhi alleging that they were residing in Delhi at the time of filing of the claim petition. The learned Tribunal dismissed the claim petition without conducting any inquiry. In appeal, this Court directed the SHO to conduct an inquiry. The SHO submitted the report

confirming that the legal representatives were residents of Delhi at the time of filing of the claim petition. This Court accepted the report of the SHO and set aside the contrary findings of the learned Tribunal. The case was remanded back for proper inquiry by the Tribunal.

9.14. **INTEREST ON THE AWARD AMOUNT**

The question of Interest on the award amount being an important one, decisions on this may now be referred to:-

9.14.1. About 10 years back, the Claims Tribunals had been awarding interest in the range of 12% to 15%. With the fall in the bank interest rates, the Apex Court reduced the rate of interest rate from 12% per annum to 9% per annum by the judgment of **United India Insurance Co. Ltd. vs. Patricia Jean Mahajan, (2002) 6 SCC 281** and **Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9**. The Apex Court further reduced the interest rate to 7.5% per annum in the case of **Dharampal & Ors. vs. U.P. State Road Transport Corporation, 2008 ACJ 2041**.

9.14.2. In the case of **Ghaziabad Development Authority vs. Balbir Singh, II(2004) CPJ 12 (SC),** the Hon'ble Supreme Court examined the question of law on the issue whether the grant of interest @ 18% per annum by Consumer Forums in cases of deficiency of service by Development Authorities like HUDA and GDA was justifiable.

9.14.3. It was submitted by learned Attorney General before the Apex Court that the interest should be awarded taking into consideration the rates of interest payable by Financial Institutions if the amount were deposited with them. He further submitted that under the Interest Act, "Correct Rate of Interest"

would mean the highest of the maximum rates at which interest may be paid on different class of deposit by different class of Scheduled Banks in accordance with the direction given or issued under the RBI. The reliance was placed on the judgment of **Central Bank of India vs. Ravindra, AIR 2001 SC 3095** where the interest had been defined. The reference was also made to the case of Hon'ble Supreme Court relating to motor accident claims in the case of **United india insurance Co. Ltd. vs. Patricia Jean Mahajan** (supra) where in context of claims under Motor Vehicle Act, the Hon'ble Supreme Court held that with the change in economy and policy of RBI, the interest rates were lowered and the interest @ 9% per annum was awarded on the footing that the Nationalized Banks were granting interest at that rate on fixed deposit for one year. The arguments of learned Attorney General are recorded in paras 13 to 17 of the judgment.

9.14.4. The Hon'ble Supreme Court held that the principle that interest must be granted at Bank rate of interest is only applicable where proceedings are for recovery of debt and damages and where refund of amount is being claimed and the direction is to refund amount with interest, but this principle does not apply to grant of compensation. The finding of the Hon'ble Supreme Court in para 18 of the judgment is reproduced herein: -

> "18. There can be no dispute to the principles laid down in *Prashant Kumar Shahi's* case and *Bihar State Housing Board's* case (supra). It is on these principles that it is already held that awarding interest at a flat rate of 18% is not justified. It is clear that in all these cases interest is being awarded as and by way of compensation/damages. Whilst so awarding it must be shown that there is relationship between the amount awarded and the default/unjustifiable delay/harassment. It is thus necessary that there be separate awards under each such head with reasons

why such award is justified. However, the principles that interest must be granted at the current rate of interest is only applicable where the proceedings are for recovery of debt or damages. They apply where a refund of amount is being claimed and the direction is to refund amounts with interest. The principles which govern grant of interest do not apply to grant of compensation. For this reasons also it becomes necessary to consider facts and award damage/compensation under various heads."

9.14.5. The Hon'ble Supreme Court further held that when the Commission is satisfied that the complainant is entitled to compensation for harassment or mental agony or oppression, they should direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are responsible for such unpardonable behaviour. It was held that the word compensation is very wide connotation and it may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional sufferings, insult or injury or loss. The observations of the Hon'ble Supreme Court in this regard are reproduced herein:-

"We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss."

> ".....Such compensation is for vindicating the strength of law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the office/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behavior."

9.14.6. The Hon'ble Supreme Court held that the Commission must determine that there has been deficiency in service which has resulted in loss or injury and in cases where the possession had not been given to the allottee, grant of interest @18% per annum was upheld by the Court. The findings of the Hon'ble Supreme Court in this regard are as under:-

> "8. However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard and fast rule can be laid down, however a few examples would be where an

> allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental and physical. Similarly, compensation can be given if after allotment is made and there has been cancellation of scheme without any justifiable cause."

9.14.7. The Hon'ble Supreme Court held that interest according to Bank Rates can be directed to be paid only where the proceedings are for recovery of debt and damages and where the refund of amount is claimed. However, where the authority has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering, the interest up to 18% per annum can be awarded by way of compensation. In paras 21 and 22, the Hon'ble Supreme Court upheld the award of interest @18% per annum in cases where the allotment of plots was made and the payment was collected but subsequently the scheme was cancelled and the money was not returned.

9.14.8. The compensation becomes due immediately upon the accident and the interest is imposed by way of penalty for mental agony and harassment and not by way of bank rate. The Hon'ble Supreme Court has permitted interest @18% per annum in the case of **Ghaziabad Development Authority vs. Balbir Singh** (supra) on the ground that the interest is by way of penalty. Those cases related to the default of the authorities to provide the plots/houses in terms of the agreement. The motor accident claims are on a better footing as the non-payment of the award

amount violates Article 21 of the Constitution and the delay in payment of compensation may lead to irreparable damage as most of the times the victims of the road accident belong to the lowest strata of the society and death of the sole bread winner of a large family leads to starvation of the family members.

9.14.9. Where the Insurance Company has computed the compensation in accordance with law without any delay, has deposited the admitted amount and has contested the case only with respect to the disputed amount or has bonafide defence, the interest should be awarded according to bank rates. However, where the Insurance Company has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering to the claimant, the Claims Tribunal may consider awarding higher interest in terms of the judgment of the Apex Court in the case of **Ghaziabad Development Authority vs. Balbir Singh** (supra).

9.15. **Sat Prakash vs. Jagdish in FAO.No.365/1999 decided on 26th March, 2010-**

The relevant findings of this Court relating to the legal fees of lawyers are as under:-

> "11. Considering that the lawyers are the officers of the Court and they are entitled to their legal fees with dignity and so far as the claimants are concerned, they are entitled to the reasonable cost of litigation, it is desirable that wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance

Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel. The Insurance companies should also deposit the fee of their counsel by means of a separate cheque drawn in the name of their counsel with the Bank simultaneously along with the award amount to be released by the Bank to the Insurance Company's counsel."

9.16. **Somari Devi vs. Ragwar Singh in FAO No.884/2003 decided on 22nd May, 2009–**

This Court has elaborated the scope of Section 165 of the Indian Evidence Act, 1872. The relevant findings of this Court are reproduced hereunder:-

"12. The learned Tribunal could have invoked Section 165 of the Indian Evidence Act which is reproduced hereunder:-

"SECTION 165. JUDGE'S POWER TO PUT QUESTIONS OR ORDER PRODUCTION –
The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:
Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:
Provided also that this Section shall not authorize any Judge to compel any

witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."

13. This section invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact whatever and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

14. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15. Mr. Edmund Burke arguing in Warren Hastings Trial said that it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves through negligence, ignorance, or corrupt collusion, could not bring it forward. He has a duty of his own, independent of them, and that duty is to investigate the truth. If no prosecutor appears, the Court is obliged through its officer, the clerk of the arraigns, to examine and cross examine every witness who presents himself; and the Judge is to see it done

effectively, and to act his own part in it.

16. In Bartly vs. State, 55 Nebr 294 : 75 N.W.832 Harrison, C.J., said:

> "It is undoubtedly necessary that the Judge who presided should acquire as full a knowledge of the facts and circumstances of the case on trial as possible, in order that he may instruct the jury, and correctly, to the extent his duty demands, shape the determination of the litigated matters, that Justice may not miscarry, but may prevail; and doubtless, it is allowable at times, and under some circumstances, for the presiding Judge to interrogate a witness".

17. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

18. The framers of the Act, in the Report of the Select Committee published on 1st July, 1871 along with the Bill settled by them, observed as follows:-

> "Passing over certain matters which are explained at length in the Bill and report, I come to two matters to which the Committee attach the greatest importance as having peculiar reference to the administration of justice in India. The first of these rules refers to the part taken by the judge in the examination of witnesses; the second, to the effect of the improper admission or rejection of evidence upon the proceedings in case of appeal.
>
> That part of the law of evidence which relates to the manner in which witnesses are to be examined assumes the

existence of a well-educated Bar, co-operating with the Judge and relieving him practically of every other duty than that of deciding questions which may arise between them. I need hardly say that this state of things does not exist in India, and that it would be a great mistake to legislate as if it did. In a great number of cases – probably the vast numerical majority – the Judge has to conduct the whole trial himself. In all cases, he has to represent the interests of the public much more distinctly then he does in England. In many cases, he has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."

19. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided."

9.17. Rajiv Dhawan vs. Phirtu, order dated 19th August, 2009 in MAC.APP.347/2009-

9.17.1. Section 196 of the Motor Vehicles Act provides for imprisonment upto three months or fine upto Rs.5,000/- or both for the driver and owner of the uninsured vehicles. Delhi Police has not been prosecuting the owners and drivers of uninsured vehicles under Section 196 of the Motor Vehicles Act. This Court issued Show Cause Notice to the Commissioner of Police on 19th August, 2009 in pursuance to which the Delhi Police has regretted the lapse in not implementing Section 196 of the Motor Vehicles Act and has issued a Standing Order No.157/2009 for adding Section 196 of the Motor Vehicles Act in all pending investigations and for filing of supplementary challans in the cases pending trial in respect of uninsured vehicles. Upon invoking Section 196 of the Motor Vehicles Act, the owners of many uninsured vehicles have paid the claim amount to the claimants.

9.18. Head of Department, Air Force Station Amla vs. Ram Kumar Giri, judgment dated 12th November, 2009 in MAC.APP.No.284/2008-

9.18.1. Air Force Truck killed a person in a motor accident on 22nd May, 2009. The Tribunal awarded a sum of Rs.4,74,488/- against which the Air Force filed the appeal before the High Court raising the plea of sovereign immunity.

9.18.2. The law with respect to sovereign immunity is well-settled by the Hon'ble Supreme Court in various judgments. The rule of immunity in favour of Crown based on common law in the United Kingdom has disappeared from the land of its birth and it has no validity in our country after the Constitution. The Hon'ble

Supreme Court has further held that Article 300 of the Constitution has saved the right of Parliament to enact such law but no law has been enacted till now. The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The Hon'ble Supreme Court in the case of **Pushpa Thakur v. Union, 1984 ACJ 559, AIR 1986 SC 1199** has held that the doctrine of sovereign immunity has no application so far as claims for compensation under the Motor Vehicles Act are concerned.

9.18.3. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.

9.18.4. Vide order dated 12th November, 2009, this Court has directed the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending

motor accident claim cases as well as cases that may arise in future.

9.19 Yashpal Luthra vs. United India Insurance Co. Ltd., judgment dated 9th December, 2009 in MAC.APP.No.176/2009, MANU/DE/3174/ 2009-

9.19.1. A comprehensive/package insurance policy covers the occupants in a private car and a pillion rider on a two-wheeler and there is a specific clause in the insurance policies in this regard. Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA) are the statutory authorities to regulate the tariff and terms and conditions of the insurance policies and there are directions of both these authorities to cover the occupants in a private car and a pillion rider on a two-wheeler under comprehensive/package policy.

9.19.2. Despite the clause in the policy and the directions of the TAC and IRDA, the insurance companies do not accept their liability and litigation in this regard is pending in various Courts all over the country.

9.19.3. This Court examined the officers of United India Insurance Co. Ltd. as well as TAC and IRDA under Section 165 of the Indian Evidence Act, 1872. All the officers admitted the liability of the Insurance Companies in such matters. The Court also issued notice to all other insurance companies. On 16.11.2009, IRDA issued fresh circular reiterating the factual position. IRDA thereafter convened a meeting dated 26th November, 2009 of all the 17 Insurance Companies who after deliberations, admitted their liability in respect of occupants in a private car and a pillion rider on a two-wheeler under the comprehensive/package policy. All the Insurance Companies

agreed to comply with the Circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the insurance companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue instructions to their respective lawyers and the operating officers within seven days. The insurance companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in respect of appeals filed by the claimants before the High Courts on the above aspect. The number of appeals pending before the High Courts have been agreed to be identified by the Insurance Companies within two weeks and the withdrawal to be done within four weeks thereafter.

9.19.4. This Court held that where the vehicle is covered under a comprehensive/package policy, there is no need for a Motor Accident Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In view of the Tariff Advisory Committee's directives and those of the Insurance Regulatory Development Authority, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the case before it. All the Motor Accident Claims Tribunals have been directed to take note and ensure that no such plea is allowed to be put forward by any insurance company.

10. THE 'INQUIRY' CONTEMPLATED UNDER SECTION 168 of MOTOR VEHICLES ACT, 1988

10.1. The inquiry contemplated under Section 168 of the Motor Vehicles Act, 1988 is different from a trial. The inquiry

contemplated under Section 168 of the Motor Vehicles Act arises out of a complaint filed by a victim of the road accident or an AIR filed by the police under Section 158(6) of the Motor Vehicles Act which is treated as a claim petition under Section 166(4) of the Motor Vehicles Act. These provisions are in the nature of social welfare legislation. Most of the victims of the road accident belong to the lowest strata of the society and, therefore, duty has been cast upon the police to report the accident to the Claims Tribunal and the Claims Tribunal is required by law to treat the Accident Information Report filed by Police as a claim petition. Upon receipt of report from the police or a claim petition from the victim, the Claims Tribunal has to ascertain the facts which are necessary for passing the award. To illustrate, in the case of death of a victim in a road accident, the Tribunal has to ascertain the factum of the accident; accident having being caused due to rash and negligent driving; age, occupation and income of the deceased; number of legal representatives and their age. If the claimants have not produced copies of the record of the criminal case before the Claims Tribunal, the Claims Tribunal is not absolved from the duty to ascertain the truth to do justice and the Claims Tribunal can summon the investigating officer along with the police record.

11. INVESTIGATION OF MOTOR ACCIDENT CASES BY THE POLICE

11.1. Section 158(6) of the Motor Vehicles Act was incorporated in 1994 and it provides that the SHO of the Police Station shall send Accident Information Report (AIR) to the Claims Tribunal within 30 days of the recording of the FIR and a copy to the concerned Insurance Company. The object of Section 158 (6) of the Motor Vehicles Act is that the police is the first agency to take cognizance of the accident and it has the entire evidence required for initiating the proceedings for compensation.

11.2. During the course of hearing of **Rajesh Tyagi vs. Jaibir Singh, FAO No.842/2003** on 21st April, 2009, it was noticed that Delhi Police was not implementing Section 158(6) of the Motor Vehicles Act despite directions passed by the Hon'ble Supreme Court in **General Insurance Council vs. State of Andhra Pradesh, AIR 2007 SC 2696.** Notice was, therefore, issued to the Commissioner of Police to place on record the status on implementation of Section 158(6) of the Motor Vehicles Act along with the data of compliance for the last 22 months from the date of the judgment of the Hon'ble Supreme Court. Directions were also given to the Claims Tribunals to place on record the compliance of Section 166(4) which provides that the Claims Tribunals shall treat the report forwarded to it under Section

158(6) as an application for compensation.

11.3. On 18th May, 2009, the DCP (Hqrs.) of Delhi Police filed an affidavit stating that 15,370 accidents took place during July, 2007 to April, 2009 and the information in the prescribed proforma under Section 158(6) of the Motor Vehicles Act, 1988 has been sent to the Motor Accident Claims Tribunals. The Registrar (Appellate) of the High Court also filed a report received from the Motor Accident Claims Tribunals in which it was stated that no report has been received by the Claims Tribunals from Delhi Police under Section 158(6) of the Motor Vehicles Act, 1988. In view of the contradictory stand taken by the Delhi Police and the Claims Tribunals, the Delhi Police was directed to produce the documents relating to the compliance of Section 158(6) of the Motor Vehicles Act with respect to eleven Police Stations on 28th May, 2009.

11.4. On 28th May, 2009, Dy. Commissioner of Police (Hqrs.) of Delhi Police admitted non-compliance of Section 158(6) and filing of incorrect affidavit before the High Court whereupon proceedings for contempt of Court were initiated against DCP (Hqrs.). DCP (Hqrs.) tendered unconditional apology and sought permission to withdraw the incorrect affidavit. Delhi Police agreed to strictly follow the law in future and consider the

suggestions for streamlining the motor accident cases.

11.5. On 8th June, 2009, Delhi Police filed an undertaking to start the following initiatives to implement Section 158(6) of the Motor Vehicles Act:-

11.5.1 Delhi Police has started a website (www.dpacciclaim.in) in which all relevant information/documents are placed which can be downloaded by the claimants, Insurance Companies as well as Tribunals.

11.5.2 Registers to be maintained at police station level indicating the details such as FIR Number, date of dispatch of Form 54 to the learned Claims Tribunal, etc. A column containing details of information not included in Form 54 along with reasons for its non availability shall also be maintained in the register.

11.5.3 Delivery of FIR to the Claims Tribunals on the date of registration.

11.5.4 Entries in red ink in FIR index about date of dispatch of Accident Information Report (hereinafter referred to as AIR).

11.5.5 Checking of AIR (Form 54) dispatch records mandatorily during six monthly inspections by Gazetted Officer.

11.5.6 ACsP/SHOs shall forward final reports to the Magistrate only on production of dispatch of AIR (Form 54) to the learned Claims Tribunal, owner and insurer of the offending vehicle and the victim/his or her family.

11.5.7 Claims Tribunal Monitoring Cell headed by Inspector to be set up in each District to monitor delivery of AIR (Form 54) in time.

11.5.8 Monthly meeting of ACsP, PG Cell, In-charge of Claims Tribunal Monitoring Cells with the Claims Tribunals.

11.5.9 Appointment of Naib Court (a police officer) by District DCsP with the Claims Tribunals.

11.5.10 Review of pendency of AIR (Forms 54) by District DCsP in weekly law and order meeting.

11.5.11 Placement of AIR (Form 54) on the website so that it can be downloaded by the Claims Tribunals, Insurance Companies and claimants.

11.5.12 Installation of checklist boards in SHOs rooms.

11.5.13 Establishment of District Cells as pilot project in three districts.

11.6. This Court passed following directions to Delhi Police on 8th June, 2009:-

> "(i) In terms of the said undertaking of the Delhi Police, the Accident Information Report (Form 54) be submitted with the concerned Motor Vehicles Tribunal within 30 days of the registration of FIR of accident. The Accident Information Report shall contain the following additional information:-
>
> "14. In case of death: Names and address of the next of kin of the deceased.
>
> 15. In case of injury: Nature of injuries suffered
>
> 16. Names and addresses of the eye-witnesses.
>
> 17. In case of transport vehicles:
>
> (i) Particulars of the permit.
>
> (ii) Particulars of the fitness certificate".
>
> (ii) The Accident Information Report shall be accompanied by the attested copies of the FIR, site plan, photographs, registration cover, driving licence, insurance policy,

permit and fitness certificate of the offending vehicle. MLC and Post - mortem report shall be submitted as soon as they are received. If any of the aforesaid information or document is not available at the time of submitting the AIR, the same may be submitted as soon as the same is received.

(iii) Simultaneously upon filing of AIR by the SHO with the Claims Tribunal, the copy of the AIR be furnished to the Insurance Company along with the aforesaid documents."

11.7. With respect to the accidents during the period 1994-2009, Delhi Police has been directed vide order dated 5th November, 2009 to carry out the following action:-

11.7.1 The Delhi Police shall file Accident Information Reports under Section 158(6) of the Motor Vehicles Act in respect of all the pending cases filed before the Claims Tribunals after 14th November, 1994.

11.7.2. The Delhi Police shall collect the list of all pending cases filed after 14th November, 1994 from the Claim Tribunals and shall file the Accident Information Reports at the time of the hearing of the claim cases before the learned Tribunal.

11.7.3. The service of summons on the driver, owner and eye-witness in all pending cases, if not effected, shall be effected through the Delhi Police who shall ensure their service and production before the concerned Claims Tribunal.

11.7.4. The Delhi Police shall also place on record the relevant documents before the Claims Tribunal including FIR, MLC/post mortem report, site plan, driving licence, registration cover, Insurance policy, fitness, permit, etc. at the time of hearing of the cases before the Claims Tribunal.

11.7.5. The Delhi Police has already deputed a Naib Court with every Claims Tribunal. The Naib Court shall remain present at the time of hearing of all the cases and the Claims Tribunal shall pass the appropriate order for filing of the report under Section 158(6), service of the owner, driver and eye-witness or production of documents as the case may be. The copy of such orders shall be given dasti to Naib Court whereupon the Naib Court shall note down the next date of hearing of the cases, coordinate with the concerned Police Stations and provide the status report of those cases to the Court on the next date of hearing. The compliance of this order shall be done by Delhi Police in a phased manner.

11.7.6. In the event of non-compliance of this order by Delhi Police, the concerned Tribunal shall bring the same to the notice of the ACP concerned in the monthly meeting between Claims Tribunals and the ACsP in terms of order dated 8th June, 2009.

12. SUBMISSIONS OF THE LEARNED AMICUS CURIAE

Dr. Arun Mohan, the learned amicus curiae has, based on his research, made following submissions on the scope of "Inquiry" under Sections 168 and 169 of the Motor Vehicles Act, 1988:-

12.1. In the dispensation of justice, the role of procedure is to enable consistency, accuracy and predictability in the outcome. All judicial procedures have to conform to the principles of Natural Justice where the prime factor is the right to be heard.

12.2. There are broadly two procedural systems: (1) Adversarial; and (2) Inquisitorial.

12.3. The first, in relation to criminal law also called Accusatorial, is to be found in England (on which pattern our legal system is based), USA, Canada and Australia.

12.4. The second, Inquisitorial, is found in the Continental Europe.

12.5. In broad terms, an Adversarial system refers to the common law system of conducting proceedings in which the parties, and not the Judge, have the primary responsibility for defining the issues in dispute and for investigating and adjudicating the dispute.

12.6. In the Adversarial system, two or more opposing parties gather evidence and present the evidence and their arguments to the Judge. The Judge knows nothing of the litigation until the parties present their cases to him as the decision maker.

12.7. The term 'Inquisitorial' refers to civil code systems in which the Judge has such primary responsibility. 'Inquisitorial' also connotes an Inquiry where the decision maker investigates a matter.

12.8. In the Inquisitorial system, the presiding Judge is not a passive recipient of information. Rather, the presiding Judge is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He actively steers the search for evidence and questions the witnesses, including the respondent or defendant. The lawyers play a more passive role, suggesting routes of Inquiry for the presiding Judge and following the Judge's questioning with questioning of their own.

12.9. An Inquisitorial system is a legal system where the Court or a part of the Court is actively involved in determining the facts of the case, as opposed to an Adversarial system where the role of the Court is solely that of an impartial referee between parties. Inquisitorial systems are used in some countries with civil legal systems as opposed to common law systems.

12.10. The Court procedures in an Inquisitorial system vary from country to country.

12.11. Even countries using common law, including the United States, may use an Inquisitorial system for summary hearings in the case of misdemeanors such as minor traffic violations.

12.12. In some jurisdictions, the trial Judge may participate in the fact-finding Inquiry by questioning witnesses even in Adversarial proceedings.

12.13. Even in our criminal trials which are purely Adversarial (or Accusatorial), the recent trend has been for a more active role for the Judge.

12.14. The goal of both the Adversarial system and the Inquisitorial system is to find the truth. But the Adversarial system seeks the truth by pitting the parties against each other in the hope that competition will reveal it, whereas the Inquisitorial system seeks the truth by questioning those most familiar with the events in dispute. The Adversarial system places a premium on the individual rights of the accused, whereas the Inquisitorial system places the rights of the accused secondary to the search for truth.

12.15. The relative merits and demerits of Adversarial systems have been extensively debated.

12.16. The emphasis on 'winning at all costs' without commensurate concern for truth-seeking dismays some citizens, and a growing number are demanding reforms in the legal system.

12.17. The Adversarial system has severe critics as well as staunch defenders. The Courtroom is seen as a battleground or playing field where contestants vie for victory.

12.18. Although many concede that the Adversary system is imperfect and that it may be subject to abuse and

manipulation, many still believe that, by giving all parties and their advocates an opportunity to present evidence and arguments before an impartial Judge, it promotes a free and pluralistic society with the best available means of settling disputes.

12.19. The Code of Civil Procedure, 1908 is a Code which embodies many rules of procedure which were drawn from common law.

12.20. Section 2(g) of the Criminal Procedure Code [1 of 1974] defines 'inquiry' as being every inquiry, other than a trial, conducted under that Code by a Magistrate or Court. The Cr.P.C. being primarily Accusatorial, the term 'inquiry' is used more as a forerunner to a trial. Though the term Inquiry has been used also for proceedings which culminate in restraints or other action, but not punishment.

12.21. **History of the statutory provision : -** The phrase '*hold an inquiry*' followed by '*to determine*' the '*amount*' as a final adjudication in contradistinction to an Inquiry into facts so as to recommend some other action or trial as it appears in Section 168(1) of Motor Vehicles Act, 1988 has the following legislative history:-

- Motor Vehicles (Amendment) Act (100 of 1956). Also Extraordinary Part II, Section 2, No. 47 November 12, 1955, pages 555, 626. Gazette of India, inserted Sections 110A to 110F in the Motor Vehicles Act [4 of 1939]. This is where 'inquiry' found statutory insertion. Prior to this amendment, the claimant had in every case to sue in the Civil Courts.
- It was only in 1956 [by Amendment Act 100 of 1956] that the legislature substituted, for the ordinary remedy of a civil suit, a special remedy which was summary in nature and provided for the constitution of Claims Tribunals with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death or bodily injuries to persons arising out of the use of motor vehicle.
- Sections 110A to 110F were inserted the Motor Vehicles Act 1939.

- Section 110A provided for the procedure for making a claim for compensation.
- Section 110B provided for an award of the Claims Tribunal to be made after giving the parties an opportunity of being heard, and after an Inquiry into the claim.
- Section 110C, incorporated the words: subject to any rules that may be made in that behalf, the Tribunal *may follow such summary procedure as it thinks fit*.
- Section 110D provided for an appeal from the award made by the Claims Tribunal.
- Section 110E, provided for recovery of compensation money as arrears of land revenue.
- Section 110F excluded, the jurisdiction of the Civil Court.
- The civil Court was also debarred from issuing any injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of a claim for compensation.
- These provisions show the importance attached by the legislature to the need for prompt disposal of such claims, while leaving unaffected the principles of substantive law as to liability.
- The no fault liability was introduced in the 1939 Act, pursuant to Law Commission's 85th Report (1980) by Amendment Act 47 of 1982.
- These provisions (Sections 110A to 110F) were also inserted (with some changes) by Amendment Act, [35 of 1977] into The Inland Vessels Act [1 of 1917].

12.22. The other statutes in which the inquiry is contemplated are as under:-

- Evacuee Interest (Separation) Act [64 of 1951] – Section 8(1).
- Displaced Persons (Compensation and Rehabilitation) Act [44 of 1954] – Sections 5, 7 and 21(2)
- Public Liability Insurance Act [6 of 1991] – Section 7(1)
- National Environment Tribunal Act [27 of 1995] – Section5(2)

- Maintenance and Welfare of Parents and Senior Citizens Act, [56 of 2007] - Section 5(1)

12.23. The term 'Inquiry' can also be of varying kinds. There can be three types of Inquiries:

12.23.1 An Inquiry which is only fact-finding, as for example an Inquiry under the Commissions of Inquiry Act;

12.23.2 An Inquiry which is forerunner to a trial, for example an Inquiry under the Cr.P.C.; and

12.23.3 An Inquiry which culminates in a final decision determining a right or liability and susceptible to a first appeal.

12.24. The procedure for the third type of inquiry has to be somewhat deeper than they would be with an Inquiry that does not culminate in a final decision for determination of rights and liabilities. Further, for this (third) type, there has also to be a mix of the Adversarial element.

12.25. An Inquiry contemplated by Section 168(1) of Motor Vehicles Act, 1988 is of this type. It is a different matter that in practice, before the Claims Tribunals, the typical civil Court mindset – of pure Adversarial – has dominated and the real purpose has been lost.

12.26. The statutory provision is as clear in its wording as it could be. It confers complete powers upon the Presiding Officer of the Claims Tribunal to follow such summary procedures as he thinks fit. Moreover, as noted above, it is an Inquiry as distinct from a trial. Unfortunately, Courts have not viewed the matter in its correct perspective.

12.27. As far as the Claims Tribunal is concerned, it is a lean towards something appropriate which can be loosely called a mix of Inquisitorial and Adversarial procedures which are summary and, more importantly, tailored to the

subject. Such tailoring being carried out in exercise of the statutory edict – follow such summary procedure as it (the Presiding Officer / Claims Tribunal) thinks fit.

12.28. The procedure has always been adapted to the needs of the jurisdiction which is being exercised.

12.29. Sections 168 and 169 of the Motor Vehicles Act, 1988 does not use the word 'trial', but uses the word 'inquiry' and that too a 'summary' one. It will need to be a little more detailed – so as to make the right to be heard meaningful – but the overall objective to determine just and fair compensation remains paramount, in which case procedure can be quite short and need not replicate the typical civil Court trial.

12.30. The statute has allowed the Claims Tribunals to follow such summary procedure as it thinks fit, subject to any rules. This really means that a far wider discretion to evolve procedure has been given to the Claims Tribunal than has been given to the civil Court. However, in following the procedure, Claims Tribunal cannot ignore the principles of Natural Justice. The Claims Tribunal has to render a judgment which on facts approximates best with what transpired and on law shows a fair and correct application to the facts as are admitted or as (the disputed ones) are found.

12.31. In our system of jurisprudence, what should be the depth of procedure is a question that must be kept uppermost in the judicial mind. Too shallow and too summary is as wrong as having one so deep, detailed and in-depth that they consume too long a time and defeat the purpose.

12.32. Despite the elapse of over two decades of the new Act plus 25 years of the old Act, one has not seen (except in the recent past) the conceiving and following – as a part of '*as it thinks fit*' – of such summary procedure as would be efficient and effective. In my respectful submission, it therefore falls upon the Hon'ble High Court

to exercise its jurisdiction to conceive and detail such procedure, and do so as part of issuing a guideline judgment.

12.33. Most of that which has to be proved before or considered by the Claims Tribunal is something that: (1) can be found at the time of investigation, i.e., within a day or two of the accident; and (2) can be verified by a field agent of the insurance company as to its authenticity, thus preparing a near complete package from which a matter can be fairly without really anything more material, (adducing of evidence) inquired into / adjudicated upon by the Claims Tribunal though as a matter of tradition, some opportunity to lead evidence may be given.

12.34. Going into this further is necessary, because there are many poor claimants where after years of waiting, the Claims Tribunal has passed an order (to the effect) the claimants have failed to prove and therefore the petition is dismissed. The purpose of the statute is social purpose as the statute uses the word (and rightly) inquiry. It does not use the word 'trial'.

12.35. What does this 'inquiry' mean? The first is the Proportionality; and the second is Tailoring of procedures. For the first, overspeeding by 10 kmph, jumping of a traffic light and the other is a terrorist act where it would be a sentence to death. One can be short and swift and the other will have to be comprehensive. Second, to be able to serve its larger purpose, i.e. hand out efficient and fair justice, a procedure must always be tailored to the subject (or offence). This way, it yields: (1) more accurate justice at minimal costs in terms of money; and (2) minimal time consumption.

12.36. The result is that the deprivation in that one year will defeat justice. It will not apply the balm at a point of time by when the wound can heal and to offer the balm when the wound would have become chronic and not heal, is no justice. If medical attention to the injured in accident needs to must begin well within one hour, the legal attention must also conclude well within one year.

12.37. On the question of material facts, the facts in issue and evidentiary facts, the following excerpts from 'Justice Courts and Delays' (Chapter 6 Topic 4 at page 453 – paras 14 and 15) are relevant:-

> "14 The word 'fact' has been used in law of evidence, to mean and include the *factum probandum* or the principal fact to be proved and the *factum probans* or the evidentiary fact from which the principal fact follows immediately or by inference. Put differently, 'Facts' may be either 'facts-in-issue' which are the principal matters in dispute or merely 'relevant facts' which are evidentiary in nature and purpose, and therefore, directly or by inference, prove or disprove the 'facts-in-issue'.
>
> 15 Broadly stated, in current use there are three categories of Facts:

Material facts	May or may not be in dispute, but are necessary to be averred so as to make the suit maintainable.
Facts-in-issue	Arise from Pleadings (and also from the contents of a document, answers to interrogatories, statement before issues etc), but do not, repeat not, include such of the material facts which are not in dispute.
Evidentiary facts	Such facts as are necessary to be brought on record so as to prove or disprove the facts-in-issue.

The first, 'Material facts' are necessary to be stated in order to constitute a cause of action for a claim, or

form the basis of a defence. The Second, or the *factum probandum* or the facts-in-issue, are the principal matters in dispute and are the facts to be proved. The third – *factum probans* – are evidentiary facts, which directly or by inference, prove or disprove the facts-in-issue (*factum probandum*).

"

12.38. There is a duty of the insurance company. Let us – by picking up a hundred decided cases from the Claims Tribunal – ask ourselves as to that which was adduced as evidence: How much of it was really necessary? How much of it was missing? and, more importantly, how much could have been received as information at the initial stage? and then, after giving an opportunity to the insurance company to ascertain and verify (and not simply deny) can be treated as evidence sufficient for the purposes of inquiry.

And, what was that which could not have been collected at the time of investigation and presented as a package to the Claims Tribunal, and required to could not be adduced as evidence at the trial or Inquiry before the Claims Tribunal (assuming it to be a trial).

These questions have to be split as short pointed questions which are placed within a chain of facts where the bulk – hopefully – has been identified and is not disputed. Thus, assuming 20 facts that were necessary to decide the case, at least 15 (or more) are identified and then admitted in the chain of facts. Of the remaining five (or less) also, the scope should be narrow and the onus correctly placed.

To explain the pointed or the narrow range of the issue, and we go here in relation to the income, to have an issue which reads:

What amount was the deceased earning? is no issue, as that gives a range from a beggar at the street corner on the one side to a big time stock operator on the other.

An issue like this should be preceded by a note based on the investigation and the documents and the positive defence where the prefatory note (or the post-script) could record the admitted facts as to the occupation and then record the range, as for examples Rs.5 lakhs per year as contended by the claimants or only Rs. 50,000 (or minimum wages) per year as contended by the insurance, or anywhere in between.

Similarly, if he left behind five relatives, who all was or was not a relative and if so, a dependent on the deceased ought to be a separate small or sub-issue with prefatory notes and post-scripts.

The material for these prefatory notes or post-scripts ought to be on the basis of information collected soon after the accident, and the positive defence of the insurance company. Many of the papers so collected can be taken as self-proving and the Claims Tribunal can come to a decision.

12.39. In a typical civil trial of the 19th century, almost all onus was upon the plaintiff. Here, it is an inquiry, but even if it were a trial, the onus – by reason of:

(a) prior investigation;

(b) documents collected and prima facie showing the state of affairs;

(c) positive defence of the insurance company; and

(d) presumptions;

has to be placed on the claimant, the insurance company or even the police. However, this is not something which is based on the personal knowledge of the police, but on record and papers that were collected by them during the course of investigation.

All documents in power and possession of the parties which are relevant to the controversy should be produced and the affidavit of discovery and production of documents (on the lines of Form No.5 Appendix C to the Code) should be filed (or ordered) in routine. This responsibility is greater if the party is an instrumentality of the State as many of the insurance companies are.

Insofar as the insurance companies in the private sector are concerned by reason of their placement and their duties towards society generally, in this case the principle would equally apply to the insurance companies in the private sector.

If the Presiding Officer of the Claims Tribunal senses that all documents or a particular document or a copy of the record has not been produced, he can always make an order directing discovery and production of documents on affidavit by way of special discovery (which is discovery relating to a particular document or a class of documents or copy/ies of record) or a general discovery of documents relating to the controversy.

12.40. The aforesaid submissions of the amicus curiae have been noted verbatim with a view to help generate ideas in order to develop more efficient procedures and practices. Number of other submissions made by the amicus curiae have been accepted, but have not been noted above for sake of brevity.

13. PRINCIPLES APPLICABLE TO INQUIRY UNDER SECTIONS 168 AND 169 OF THE MOTOR VEHICLES ACT, 1988

With respect to the nature of inquiry, this Court accepts the following principles to be applicable to the inquiry under Sections 168 and 169 of the Motor Vehicles Act, 1988:-

13.1. On a fair reading of the statute, the wide power given to the Tribunal, the absence of 'onus' upon the claimant, the general position of the claimants and their wherewithal with the social obligation of the welfare State, all indicate that the procedure of the Claims Tribunal has to be Inquisitorial though keeping in view that most other procedures in the country are Adversarial, it would be proper to conceive and put in practice something which is a mix of the two.

13.2. To explain the difference, the Claims Tribunal would not be simply passive, give both the parties sufficient opportunity to adduce evidence, and at the end of the 'trial' announce who has won. At the same time, he will not assume the role of investigator and of the prosecutor apart from being the Judge in the Inquisitorial system.

13.3. Even in the pure Adversarial (where, in the past, the Judge remained passive and even in civil and criminal litigation), there has been a slow and steady move towards more active participation of the Judge. There have been two factors. The first is to do greater justice by removing imbalance between the two parties (and their lawyers); and the second is to more efficiently manage the cases and bring about efficiency

13.4. The proceedings before the Claims Tribunal are more of an Inquiry rather than an Adversarial trial. In other words, it is not that the claimant has to allege everything which the insurance can (without bothering to ascertain the facts) deny everything and then the Court expects proof of one and every allegation made in the claim petition.

13.5. Keeping in view the wording of the statute, the use of the phrase 'hold an inquiry' as also particularly the absence of the word 'trial' and; the larger purpose of the statute as demonstrated by the Statement of Objects and Reasons; observation into what has gone on; the type of the claimants; the type of the issues; and the need to bring about efficiency, procedure as are tailored to the subject has to be evolved by the Claims Tribunal.

13.6. The nature of the claims before the Claims Tribunal do not vary as widely as they do before a Civil Court, and there is an element of stereotype in them.

13.7. The facts which are to be ascertained are usually known and it is to be found out whether those facts exist or do not exist. It is only in that sense that an Inquiry is to be carried out.

13.8. Most of these facts are such which are to be proved by documents, generally as copies of records. If these are listed and summoned so that they are before the Claims Tribunal, it can make a world of a difference.

13.9. There is a distinction between proof of a document and what the document proves. Some of the documents can be taken at their face value. In fact, the onus is reversed so that the evidence in proof can be asked only if there is specific denial. The photocopies of documents or entries from the Transport Department can be presumed as correct leaving the onus to disprove on one who disputes it. Every document produced does not require a proof as if it were an unregistered Will leaving a large estate to an outsider.

13.10. If an allegation is denied, the respondent must state his reasons for the denial and if necessary, put forward his own version of events. Subject to certain exceptions, the general rule is that if a defendant fails to deal with an allegation, it is to be taken as an admission.

13.11. If following this procedure which is generally collection of documents, a case appears to be one which can be disposed of at the first hearing, it should be so disposed of. There can, however, be cases where there is need for further inquiry. But that will have to depend upon whether a sufficient defence has been raised.

13.12. If the case needs further inquiry, the Court may frame issues. Issues help as a signpost to how the matter has to be proceeded with. They are signposts of topics (facts). However, before the issues, if a prefatory note on the facts which are not in dispute or not sufficiently in dispute or facts that can be taken judicial notice of, is made, the controversy stands narrowed down, the issues are more accurately framed and serve a greater purpose.

13.13. The present practice of framing the issues in a wide form calls for a change. Instead, what the Claims Tribunals as a part of 'following such procedures *as it thinks*

fit' should do is to first go through the file and identify: (i) the chain of material facts and events (most of which are ordinarily not disputed); (ii) the scope of defences that are permissible; (iii) the factual questions that survive for decision; (iv) the missing links, and (v) the points of law which will need application to the facts and determination.

After putting down a page or two of written material to depict the aforesaid, and also narrow down the controversy, frame pointed issues which bring out the factual and legal questions. The onus of the sub-issues has to be more correctly placed. The defence expected has to be not a mere denial but a positive one after the Respondents have investigated. The scope of the issues when framed could be narrow and not wide.

13.14. It is not always that if issues have been framed, further evidence is required. The matter can be disposed of after hearing the arguments based on the material on record or some evidence on a specific point may be called for. In any inquiry, there is also a duty of the Court to see that the evidence which could have been brought is brought so that justice is done. A template for a judgment keeping in view the various types of cases that come, can be developed by Claims Tribunal in consultation with each other and then slowly perfected over time.

13.15. For these issues, a form which is more of a checklist can be developed and the Claims Tribunal can simply correlate the claim, the response and the material on record and then come to a conclusion whether any issue arises or is to be treated as an admitted fact or what could the pointed issue that is to be framed.

13.16. These principles may be kept in mind by the Claims Tribunals while dealing with the motor accident claim cases.

14. SUMMARY OF PROCEDURES

The procedure for investigation of motor accident claim cases by the police under Section 158(6) of the Motor Vehicles Act

and the inquiry by the Claims Tribunal under Sections 166(4), 168 and 169 of the Motor Vehicles Act, 1988 read with the Delhi Motor Accidents Claims Tribunal Rules, 2008 in terms of the aforesaid directions issued by the Hon'ble Supreme Court and this Court is summarized as under:-

14.1. Immediately upon the receipt of the intimation of the accident, the Investigating Officer of the police shall inspect the spot of accident, prepare a site plan and also take photographs of the accident spot. The Investigating Officer shall also conduct spot inquiry by examining the eye-witnesses/bystanders.

14.2. The Investigating Officer shall intimate the accident to Accident Claims Tribunal within 48 hours of the accident.

14.3. If the particulars of insurance are available, the intimation of the accident shall also be given to the concerned Insurance Company of the offending vehicle.

14.4. The particulars of the accident shall also be uploaded on the website of Delhi Police.

14.5. Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Accident Information Report by the police.

14.6. The Investigating Officer shall collect the relevant evidence relating to the accident as well as computation of compensation.

14.7. The Investigating Officer shall file the Accident Information Report with the Claims Tribunal

within 30 days of the accident with copy to the Insurance Company and the claimant.

14.8. The Accident Information Report shall be accompanied by certified copies of the FIR, site plan, photographs, registration cover, driving licence, Insurance policy, permit, MLC, post-mortem report, challan and the documents relating to the proof of age, occupation, income and the number of legal representatives and their age in death case and proof of injuries and expenditure incurred by the insured in injury cases.

14.9. Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

14.10. The Investigating Officer shall produce the driver, owner, claimant and eye-witnesses before the Claims Tribunals along with the Accident Information Report. However, if the Police is unable to produce the owner, driver, clamant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Accident Information Report before the Claims Tribunal so that the nominated counsel for the Insurance

Company can remain present on the first date of hearing before the Claims Tribunal.

14.11. The police shall follow the Manual prepared by them for investigation of motor accident claim cases and filed in the case of **Rajesh Tyagi vs. Jaibir Singh** (supra). The relevant instructions contained in the Police Manual and the standing order No.157/2008 at page Nos.14 to 21 and the check list prepared by the police in this regard are attached to this order for ready reference of the Claims Tribunal.

14.12. The Investigating Officer shall also comply with the directions given by this Court in **Rajesh Tyagi vs. Jaibir Singh** (supra) and **Abdul Subhan vs. State (NCT of Delhi)** (supra). The checklist prepared by the police shall be attached to the Accident Information Report.

14.13. The Claims Tribunals shall examine whether the Accident Information Report is complete in all respects and shall pass appropriate order in this regard. If the Accident Information Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

14.14. The Claims Tribunals shall treat the Accident Information Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Accident Information Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.

14.15. The Claims Tribunal shall list the miscellaneous Accident Information Report (AIR) for preliminary hearing to enable the police to notify such date to the victim/family of the

victim, owner, driver and insurer of the vehicle involved in the accident.

14.16. After the appearance of the claimants, the miscellaneous petition shall be converted and registered as a claim petition. Where the claimant(s) have filed a separate claim petition, the AIR shall be tagged to the claim petition. If no independent claim has been preferred, the Claims Tribunal shall call upon the claimant to submit statement of facts regarding compensation in Form 'G' along with documents mentioned in Rule 8 of the Rules.

14.17. The Claims Tribunal shall also inquire and satisfy itself that the AIR relates to real accident and that is not the result of any collusion/fabrication.

14.18. The notice to the claimant, owner, driver and eye-witness shall be served through the Investigating Officer of the police. The notice to the Insurance Company shall be served through the nominated counsel of each company.

14.19. The Claims Tribunal may examine the claimant on oath to elucidate the material information (Rule 10).

14.20. The Claims Tribunal may visit the site of the accident for local investigation but in such event, must prepare a brief memorandum of facts observed, making it part of the record (Rule 15).

14.21. The Claims Tribunal may require production of the vehicle involved in the accident for inspection (Rule 16)

14.22. The Claims Tribunal may summarily examine the Investigating Officer of the police, the eye-witness or any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness

in the case or not and whether any or all of the parties are present or not. The notice to the eye-witness be sent through the police (Rule 17).

14.23. The Claims Tribunal may direct the Medical Officer or the Board of Medical Officers to examine the injured and give opinion indicating the degree and extent of disability, if any suffered within 15 days of receipt of direction (Rule 18).

14.24. The Claims Tribunal shall obtain supplementary information and documents, which may be found necessary from the police, medical and other authorities (Rule 25).

14.25. If the Claims Tribunal finds that the claim petition cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment (Rule 29).

14.26. The designated officer of the Insurance company appointed within 10 days of receipt of intimation of the claim, shall take a reasoned decision with respect to the compensation payable in accordance with law to the claimant within 30 days of the receipt of the Accident Information Report and shall submit the same with the Claims Tribunal.

14.27. If there is no defence under Section 149 of the Motor Vehicles Act, 1998, the Claims Tribunal may direct the Insurance companies to deposit the admitted amount according to their computation with the Claims Tribunal following the principles of Order XII Rule 6 of the Code of Civil Procedure. The Tribunal shall by a summary inquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

14.28. With respect to the pending cases relating to Motor Accident Claims, all the Insurance Companies shall appoint a designated competent officer responsible for processing of each case within 10 days and such officer shall process the claim within 30 days and pass a reasoned decision/order in writing about the amount payable in accordance with law. The decision of the designated officer along with the report of the Investigator shall be filed before the learned Tribunal within 20 days of the date of the decision of the designated officer.

14.29. The Tribunal shall categorize the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability. Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary inquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition. Where the insurer disputes the liability, the Claims Tribunal shall frame the issues.

14.30. Before or at the time of passing of the award, the Claims Tribunals shall examine the claimants to ascertain their financial condition and needs and shall pass an order with regard to their share, mode of disbursement, amount to be kept in fixed deposit and period of fixed deposit according to the financial condition of the claimants. (It has been noticed that, in many cases, the Tribunals have been passing the standard orders of disbursement and fixed deposits without examining the financial condition and needs of the claimants and the poor victims are left at the mercy of either accepting the order or again engaging the counsel to approach the Court for modification).

14.31. At the time of examining the Claimants, the Claims Tribunals shall also ascertain the complete address of the claimants as well as their counsel. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

14.32. If the award amount has been directed to be deposited by the Insurance Company with the bank, copy of the award be sent to the Nodal Officer of the Bank along with the Court stamped copy of the photographs and signatures of the claimants. The photographs and signatures of the claimants be taken at the time of examining them before or at the time of passing the award. Two sets of photographs and signatures should be taken, out of which one set should be sent to the Nodal Officer of the Bank along with the copy of the award and the second set should be retained in the Court record for future reference and/or any irregularity being pointed out. (The forwarding of the Court stamped photographs and the signatures of the claimants would ensure that no attempt is made to defraud the system). If possible, the proof of residence and the details of the Bank Account should also be collected from the claimant at the time of examining them and one stamped set of the same should also be forwarded to the Bank and the second set be retained in the Court record.

14.33. In the award, the Claims Tribunals shall specifically direct the Insurance company and/or the owner/driver, as the case may be, to deposit the award amount with the Tribunal and/or the Bank along with the interest upto

the date of notice of deposit to the claimants with a copy to their counsel. The names and addresses of the claimants and their counsel for issuance of notice of deposit be mentioned in the award.

14.34. The Claims Tribunal shall fix a date for reporting compliance in the award itself. The Claims Tribunals shall also direct the Insurance Company and/or driver or owner to place on record the proof of deposit of the award amount, the notice of deposit and the calculation of interest on the date fixed. Upon such proof being filed, the Claims Tribunal shall ensure that the interest upto date of notice of deposit has been deposited by all concerned.

14.35. If the award amount is not deposited within the time provided in the award, the Claims Tribunals shall proceed to recover/execute the award in terms of the directions of this Court in the case of **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra).

14.36. The Claims Tribunal shall consider keeping the award amount in fixed deposit in a phased manner depending upon the financial status and financial needs of the claimants. For example, if a sum of Rs.5,50,000/- has been awarded to the claimants, Rs.50,000/- may be released immediately and the remaining amount of Rs.5,00,000/- may be kept in 10 fixed deposits of Rs.50,000/- each for a periods of six months, one year, one and a half years, two years and so on till five years or one year, two years, three years and so on till ten years.

14.37. The following conditions may be imposed in respect of the fixed deposit:-

14.37.1. The interest on the aforesaid fixed deposits to be paid monthly by automatic credit of interest in the Savings Account of the claimant.

14.37.2. Withdrawal from the aforesaid account to be permitted to the claimant after due verification and the Bank to issue photo Identity Card to facilitate identity.

14.37.3. No cheque book to be issued to the claimant without the permission of this Court.

14.37.4. The Bank to issue Fixed Deposit Pass Book instead of the FDR to the claimant and the maturity amount of the FDR be automatically credited to the Saving Bank Account of the beneficiary at the maturity of the FDR.

14.37.5. No loan, advance or withdrawal to be allowed on the said fixed deposit receipt without the permission of the Tribunal.

14.37.6. Half yearly statement of account be filed by the Bank in the Tribunal."

14.38. The record of all the awards passed by the Claims Tribunals shall be maintained by the Nazirs in chronological order according to the date of the award in such a manner that it is easy for the Nazir as well as the enquiring litigants/lawyers to ascertain whether the payment of their award has been received or not. The following can be considered as a format:-

a) Date of award
b) Case number
c) Title of the case
d) Award amount
e) Date of deposit of the award amount
f) Date of notice of deposit by the depositor.
g) Date of notice of deposit by the Tribunal.
h) Amount of interest upto date of notice of deposit.

i) Whether award amount and complete interest deposited.
j) Balance outstanding interest.
k) Remarks (Action taken to recover the balance interest)

14.39. In all pending execution cases, the Claims Tribunals shall follow the directions of this Court in **New India Assurance Company Ltd. Vs. Kashmiri Lal** (supra). The Claims Tribunals shall direct all the Insurance Companies to provide the name of Banker and their Account number within ten days.

14.40. In respect of pending cheques, the Claims Tribunal shall forthwith issue the notice of deposit to the claimants as well as their counsels.

14.41. In respect of the expired cheques, the Claims Tribunal shall also forthwith issue notice to the Insurance Companies with direction to deposit fresh cheques within 30 days.

14.42. Where the vehicle is not insured, the Claims Tribunal shall ensure that the police has prosecuted the owner/driver of the offending vehicle under Section 196 of the Motor Vehicles Act by calling report from the Police. The Claims Tribunal shall also call for a report from concerned Metropolitan Magistrate to find out whether the owner of the offending vehicle has given security for satisfaction of the award or the vehicle has been sold in terms of Rule 6 of Delhi Motor Accidents Claims Tribunal Rules, 2008. The Claims Tribunal may also direct the owner and driver of the offending vehicle to furnish their affidavit of assets and income in Form-16A, Apprendix-E under Order XXI Rule 41(2) of the Code of Civil Procedure and sufficient security under Order XXXVIII Rule 2 of the Code of Civil Procedure.

14.43. Where the Insurance Company has computed the compensation in accordance with law without any delay, has deposited the admitted amount and has contested the case only with respect to the disputed amount or has bonafide defence, the interest should be awarded according to bank rates. However, where the Insurance Company has failed to discharge its obligations or acted capriciously or arbitrarily or negligent exercise or non-exercise of power, which has resulted in harassment and mental suffering to the claimant, the Claims Tribunal may consider awarding higher interest in terms of the judgment of the Apex Court in the case of **Ghaziabad Development Authority vs. Balbir Singh**, **II(2004) CPJ 12 (SC).**

14.44. Wherever the lawyer – client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's counsel to be deposited with the Bank along with the award amount to be released by the Bank directly to the counsel.

14.45. Many Tribunals instead of holding an inquiry into the claim by following suitable summary procedure, as mandated by Sections 168 and 169 of the Act, tend to conduct motor accident cases like regular civil suits. This should be avoided. The Tribunal shall take an active role in deciding and expeditious disposal of the applications for compensation and make effective use of Section 165 of the Evidence Act, 1872, to determine the just compensation.

14.46. The Claims Tribunal shall follow the latest precedents rendered on the subject as also principles relating to the nature of inquiry mentioned in paras 9 and 13 above.

14.47. While conducting the inquiry, the Claims Tribunal must be on guard against fanciful or false claims. The victims may deserve sympathy, but the matter has to be approached and decided according to law. Incidence of exaggerated or false claims has to be deftly dealt with. In appropriate cases, the Claims Tribunal should not hesitate to lodge a complaint under Section 340 Cr.P.C. Similarly, the Insurance Company which puts forward an evasive or irresponsible defence is liable to be burdened with costs, but where the defence is found to be false, similar action ought to be taken against them. In order to ensure efficiency of procedures and accuracy of the result (determination of the amount), purity in the information received by the Claims Tribunal and veracity of the documents that are placed before the Tribunal, whatever be the source must be brought about.

14.48. The aforesaid observations are without prejudice to the discretion of every Tribunal to follow such summary procedure as it deems fit as provided under Section 169 of the Act.

15. **CHECKLIST FOR THE CLAIMS TRIBUNALS**

15.1. Keeping in view the type of facts generally involved; the facts, the sub-evidentiary facts; and which are disputed (and therefore in issue); the evidentiary facts; the documents which prove (or disprove) the facts; if a format more of a 'checklist' needs to be developed and made available to the everyone concerned, it will be a help to the claimant, to the lawyers and to the Court.

15.2. This is not to be confused with a 'form' for the application as provided by the Rules. It will act like a series of sign posts to help call for the necessary information and then proceed with

the matter. The Claims Tribunal may use the 'checklist' (as also its own experience) to list those facts and documents which will help turn down a false or exaggerated claim and also facilitate the proof and adjudication of a just claim against a brick-wall of untenable defences often put forward by the Respondents with the hope that the case would be dismissed or the claimant would get tired and settle for less. A checklist can be prepared by the Claims Tribunals which can be periodically updated. The office of the senior-most Claims Tribunal should prepare a checklist which can be circulated with all the Presiding Officers and at a monthly meeting, they can jointly consider what all amendments and additions are to be made to it. Such a list can then be submitted to the High Court for its scrutiny.

15.3. Developing a form-cum-checklist is a specialized task but a beginning has to be made. As the first draft, a format-cum-checklist has been prepared and is annexed to this judgment as **Annexure I**, in the hope and anticipation that this will act as discussion paper for Presiding Officers of the Claims Tribunals and the lawyers to add/amend in order to prepare what would be a fine form. It is expected that the Presiding Officers of the Motor Accident Tribunals will meet periodically and based on their daily experience, discuss the facts, evidentiary facts, sub-evidentiary facts and documents; the existence and/or non-existence of which enables the Tribunal to draw a right inference for making an accurate determination. It may take a few months for a fine form to be finalized. After this form-cum-checklist is perfected, it can be translated into Hindi and other languages for guidance of the claimants

so that they do not miss out on giving the information and documents and are also told that a comprehensive format will ensure that fanciful or false claims do not succeed.

16. CLAIMS INVESTIGATION MANUAL

16.1. The Delhi Police has issued Standing Order No.157/2008 with respect to the investigation of road accident cases on 14th August, 2008. The Delhi Police has also prepared a Manual for investigation of motor accident cases in pursuance to the directions issued by this Court in the case of **Rajesh Tyagi vs. Jaibir Singh, FAO.No.842/2003.** The Delhi Police has also compiled a check list for investigation of the accident cases. The police shall follow the same while investigating the motor accident cases. The copies of the operative portion of the Manual, Standing Order and the checklist of Delhi Police are attached to this order as **Annexures II, III & IV** respectively for ready reference by the Claims Tribunals.

17. THE NEED TO BRING ABOUT EFFICIENCIES

17.1. The need to banish delays and bring about efficiencies in the adjudicative process, whether inquisitorial or adversarial, cannot be disputed. To achieve this however it needs more than a mere wish. Fortunately, the statute empowers the Tribunal, but ingrained notions of Civil Court mindset and adherence to tradition has stifled the growth and evolution of practice and

procedures, leading thereby to long delays and inefficiencies, or simply injustice. It is this as the avowed goad which should operate as the guiding star to help determine the approach of the Tribunal in every case.

17.2. In our judicial system, the doctrine of precedent plays an important part. The precedent applies both to substantive law as well as procedural law. The High Court, which is the appellate Court, can, in exercise of its appellate jurisdiction, as also its jurisdiction under Article 227 for superintendence of justice administration in the State, lay down a precedent which contains the procedure.

17.3. In other words, the principle of 'as it may think fit' which is with every Claims Tribunal and perforce are also with the appellate Court (which has more power by reason of being a High Court) can always formulate/form procedures as are suited, tailored, proportional, efficient, do not breach the rules of Natural Justice, and serve the purpose of speedy justice.

17.4. The scope of these proceedings/this judgment is to visualize and give guidelines as a precedent as to what procedure and practice the Claims Tribunal could adopt as part of summary procedure. It may be made clear that this is only a guide and

does not in any way fetter the powers of the Presiding Officer to do what on the facts of a case he thinks fit and right.

18. CONCLUSION

Coming back to the facts of the present case, in view of the legal position as enunciated above, the appeal is allowed, impugned award is set aside and the case is remanded back to the Tribunal for conducting fresh inquiry in accordance with law. The inquiry be completed within a period of six months. The parties are directed to appear before the Claims Tribunal on 10th May, 2010. LCR be sent back to the Claims Tribunal immediately through a special messenger.

19. This Court highly appreciates the extensive research and contribution of the learned amicus curiae, Dr. Arun Mohan in this matter.

20. Copy of the order be given Dasti to the counsel for the parties and the learned amicus curiae.

21. Copy of the order be also sent to the Principal District and Sessions Judge, District Judges, all the Claims Tribunals and Additional District Judges handling motor accident cases through the Registrar (Appellate) of this Court. Copy of this order be also sent to the Principal Secretary (Law), Government of NCT of Delhi.

22. Copy of this order be also sent to Mr. S. Sundar, Chairman of the Expert Committee appointed by the Ministry of Road Transport and Highways, Government of India for consideration while recommending the amendments to the Motor Vehicles Act.

J.R. MIDHA, J

APRIL 12, 2010

Annexure-I

FORMAT OF THE CHECKLIST FOR MACT

1.	Date of accident	:	.....
2.	FIR No., date and under Sections	:	.....
3.	Name of the Police Station	:	.....
4.	Name and phone No. of the Investigating Officer	:	.....
5.	Registration No. of the offending vehicle	:	.....
6.	Engine and chassis No. of the: offending vehicle		.....
7.	Name, address and phone No. of the owner of the offending vehicle	:	.....
8.	Name, address and phone No. of the driver of the offending vehicle	:	.....
9.	Particulars of the driving licence:-		
	Driving Licence No.	:	.....
	Issue by	:	.....
	Period	:	From..... to.....
	Class of vehicle	:	.....
10.	Particulars of the permit (In case of commercial vehicle)	:	.....
11.	Particulars of fitness certificate (In case of commercial vehicle)	:	.....
12.	Name and address of the Insurance Company, policy number and period of policy	:	....
13.	Name, address and phone No. of the designated officer of Insurance Company	:	.....
14.	Date of appointment	:	.....

of the designated officer
of Insurance Company

15. Name of the victim : .....

16. Age of the victim : .....

17. Occupation of the victim : .....

18. Income of the victim : .....

19. In case of death, particulars of legal representatives of the victim:-

(i) Names of legal representatives : .....

(ii) Age of legal representatives: .....

(iii) Relationship : .....

20. In case of injury :

(i) Nature of injury : .....

(ii) Disability (if any) : .....

(iii) Period of treatment : .....

(iv) Expenditure on treatment : .....

21. Date of filing of Accident Information Report (AIR) : .....

22. Documents filed along with AIR :

(i) FIR : .....

(ii) MLC : .....

(iii) Post-mortem report : .....

(iv) Photographs : .....

(v) Site Plan : .....

(vi) Mechanical Inspection Report : .....

(vii) Seizure Memo : .....

(viii) Driving Licence : .....

(ix) Permit : .....

(x) Fitness Certificate : .....

(xi) Insurance Policy : .....

(xii) Notice under Section 133 of the Motor Vehicles Act : .....

(xiii) Statement of the eye-witnesses : .....

(xiv) Report under Section 173, Cr.PC. : .....

23. Whether the police has verified the aforesaid documents : .....

24. Date of service of AIR on the Insurance Company : .....

25. Date of service of AIR on the claimant : .....

26. Whether AIR is complete in all respects? : .....

27. Deficiencies in the AIR : .....

28. Whether the designated officer of the Insurance Company has submitted the report within 30 days of the AIR? : .....

29. Whether the Insurance Company has admitted the liability? : .....

30. If so, the amount assessed by the: Insurance Company .....

31. Defences raised by the Insurance Company : .....

32. Whether the claimant has filed the application in Form 'G' along : .....

with the affidavit, photograph and proof of residence?

33. Name and address of the eye-witnesses : .....

34. Documents on record relating to:-

(i) Proof of age of the victim : .....

(ii) Proof of occupation of the victim : .....

(iii) Proof of income of the victim : .....

(iv) <u>In case of death</u>:-

(a) Proof of number of legal representatives : .....

(b) Proof of age of legal representatives : .....

(c) Proof of relationship : .....

(v) <u>In case of injury</u> :

(a) Proof of injury : .....

(b) Proof of disability (if any) : .....

(c) Proof of period of treatment : .....

(d) Proof of expenditure on treatment : .....

(e) Proof of future treatment : .....

(f) Cost of artificial Limb, (if applicable) : .....

(g) Proof of absence from duty : .....

(h) Proof of expenses on : .....

conveyance incurred by injured

(i) Proof of services of attendant and expenses incurred. : .....

35. Whether the above documents have been verified by the police. : .....

INVESTIGATION OF ACCIDENT CASES

Objectives

Upon completion of this session, you will be able to:

- preserve and photograph the accident scene and prepare sketch thereto
- collect evidence including seizures from the scene of accident
- appropriately record the FIR in accident cases
- conduct proper investigation in accident cases
- prepare chargesheet in accident cases
- describe the instructions contained in SO No 157/2008

The investigation in all accident cases shall strictly be conducted as per the instructions contained in Standing Order No. 157/2008 (ANNEXURE-A of manual) as discussed in this lesson.

I. INFORMATION

(A) Mode of receipt of information – The information in an accident case may be received from following sources:

i. PCR through CPCR on wireless
ii. By stander or a witness or victim on telephone
iii. Duty constable of hospital (where injured has been shifted) on telephone
iv. Victim personally reporting in PS

(B) Steps to be taken by CDCR and Duty Officer on receipt of information

(i) First information received in the Central District Control Room (CDCR) be transmitted to the nearest PCR van quickly to remove the injured to the nearest hospital for medical treatment. Simultaneously, information should be communicated to the local police to detail the earmarked staff to visit the accident spot and investigation be taken up without any delay.

(ii) The CDCR shall simultaneously inform the Traffic Control Room, who shall direct the Area Traffic Inspector/Zonal Officer to the accident spot.

(iii) Once received, the duty officer of the police station shall immediately record the information in Daily Diary and hand over the DD to the emergency officer.

(iv) In case information is received directly at Police Station, in addition to recording the same in DD register, duty officer of the police station shall also ensure that PCR and CDCR are informed accordingly.

II. ACTION BY INVESTIGATING OFFICER IN POLICE STATION

- Collect the relevant DD entries pertaining to information of accident
- Make an entry in the DD Register for departure (if not already made) to the place of occurrence/hospital, as the case may be
- Obtain the Digital Camera from Malkhana

- ♦ Carry the Checklist (Annexure – 'B' of the manual)
- ♦ Carry Mechanical Inspection Form (Annexure – 'C' manual)
- ♦ Carry dead body bag and white sheet in case of fatal accident
- ♦ Carry Police Tape to secure/mark the scene
- ♦ Carry Investigating Officer's kit
- ♦ Inform Draftsman telephonically, if possible (in case of Fatal Accidents)
- ♦ Inform Mechanical Inspector telephonically
- ♦ Inform private photographer telephonically (depending on circumstances)

III. INVESTIGATION KIT:

The Investigation Kit to be carried by IO shall consist of following

(1) First Aid Box
(2) Torch light (for use during night)
(3) Measuring Tapes - Cotton (100 feet)
(4) Measuring Tape - Steel
(5) Chalk for marking
(6) Crime Investigation Box
(7) Sheets of papers, pencils of various colours, carbon papers, fountain pen
(8) Blank case diaries
(9) Camera fitted with flash light unit
(10) Mobile Phone with Camera facility (subject to approval)
(11) Gloves
(12) Face Mask

Note : The Investigating officer may also avail the service of the professional private photographer depending on the circumstances.

IV. INSPECTION OF THE SPOT:

(i) The inspection of the spot to be conducted in a professional and scientific manner considering following points:
   a. directions of the vehicle(s) involved in the accident;
   b. condition of the road;
   c. whether one way or two way;
   d. visibility at the time of accident;
   e. existence of speed breakers;
   f. potholes on the road;
   g. skid marks etc.

Note : All these points should find mention in the site inspection note.

(ii) Rashness/negligence on the part of the driver including the violation/jumping of red light by the offending vehicle should be ascertained

on the basis of the inspection of the accident spot which should also be properly projected in site plan.

(iii) In cases where the IO has to leave the spot on account of recording of statement of the injured/obtaining the MLC of the injured or for any other reason, he shall ensure that the scene of accident is not left unattended

(iv) Vehicle(s) involved in accident sometimes causes obstructions to the free flow of traffic, which should be immediately removed to a side after taking photographs and recording their position.

Note: a) The SHO/ATO/Investigating Officer will take a decision regarding divergence of traffic in co-ordination with Traffic Police, if required.
b) The IO/SHO to analyze the need for re-enforcement to maintain law & order in case of situation going ugly.

V. MECHNICAL INSPECTION & FORENSIC EXAMINATIONS:

(i) MECHANICAL INSPECTION : As far as possible, Mechanical Inspection of the vehicle should be got done at the spot through a Mechanical Inspector or any other expert. In case, the expert is not readily available, it may be got done in the Police Station. Following important details should be minutely recorded during the mechanical inspection:

a. details of the damage of the vehicle(s)
b. point of impact
c. paint marks
d. any other evidence transferred from one vehicle to another at the time of impact – **Locard's 'Principle of Exchange'**.

Private Mechanical Inspector can be engaged and their fee may be got reimbursed from investigation funds.

(ii) FORENSIC EXAMINATION : Forensic expert/Crime team should be summoned at the spot to collect exhibits carefully to seek expert's opinion especially in 'hit and run' cases. All efforts should be made to collect all relevant evidence in fatal accident cases.

Locard's 'Principle of Exchange' : It is the fundamental rule upon which forensic science is based. Whenever there is contact between two items, there will be an exchange. In an accident, when two objects collide, there will be exchange of paints, clothes, hair, blood, tissues etc. which require forensic examination as these are not visible through naked eyes.

(iii) The observations about the damage should find mention in the 'ruqqa', statements of the witnesses. Photographs should indicate damages clearly and details be mentioned with case details.

(iv) Fatal accident cases, where there is no eyewitness, should be closely monitored / supervised by the Senior Officers.

VI. SITE PLAN

(i) Properly drawn site plan renders valuable evidence than the oral testimony of witnesses. Rashness/negligence on the part of the driver is ascertained by various factors depicted in the site plan. For example skid marks; over taking from left side; right of way, jumping red light etc.

(ii) Site plan should be prepared according to the scale showing the following
   a. directions of movement of vehicles,
   b. position of the vehicles,
   c. point of impact,
   d. position of deceased;
   e. skid marks;
   f. width of the road,
   g. central verge or road divider;
   h. lamp post;
   i. traffic lights,
   j. zebra crossing etc.

The services of qualified draftsmen can be requisitioned at the scene of accident (in case of fatal accident). Different colour markings could be used to describe any other circumstances/evidence having bearing in the case.

VII. PHOTOGRAPHS

(i) Photographs of the accident spot can be taken by the Investigating Officer, or through official/ professional photographer.

(ii) The photographs of tyre marks, skid marks should be taken by placing the scale bar as well as chit indicating the case details/name of witnesses.

(iii) Vehicles should be photographed from all angles to fully illustrate the extent of damage.

(iv) Besides, the photographs of the site and surrounding areas be also taken to show the exact topography for the perusal of the court at the time of trial.

(v) On each photographs, details of what is being projected should be mentioned.

VIII. SPOT ENQUIRY

(i) The Spot Enquiry may be conducted form the eye-witnesses/by standers.

(ii) It should also be verified if the driver of the offending vehicle has complied with the provisions of 134A of MV Act regarding providing medical assistance to the injured.

(iii) The injured should be immediately removed to hospital for immediate medical treatment, if not already done.

IX. RECORDING OF FIR

(i) In case the injured is declared 'fit for making statement' by the doctor attending him, his statement should be recorded highlighting and clearly mentioning the following:

a. manner in which accident occurred
b. Rash/reckless/negligent act attributed to the driver of the offending vehicle
c. description of the accused and the vehicles involved (in case the accused has escaped from the spot)
d. details of the accused and the vehicle involved (in case the accused is present at the spot)

(ii) In case the injured is declared 'unfit' for making a statement, the case can be registered in following ways:

a. on the observations of the I.O. by endorsing the First Information (DD) received at the Police Station
b. on the basis of the statement of eye witnesses
c. on the basis of the statement of co-passenger, if any.

X. FATAL ACCIDENT CASES

(i) Fatal accident cases necessarily involve conducting inquest proceedings and should invariably be investigated by an Upper Subordinate.

(ii) I.O shall carry with him white sheet to cover the dead body. In no case the dead body should remain uncovered.

(iii) I.O should prepare inquest papers – Brief facts, form 25.35 (B) PPR, Identification statement, MLC, copies of FIR/DD entries with due care and caution.

(iv) The presence of I.O at the time of Post Mortem and handing over the body to the relatives after re-identification under proper receipt is necessary.

(v) 'Hit and run' accident cases where the identity of the deceased is unknown should be examined by the ACP concerned to satisfy himself that it is not related to any other crime.

XI. TEST IDENTIFICATION PARADE

In case the driver of offending vehicle escapes from the spot, the Test Identification Parade of the accused driver should be invariably conducted after obtaining the details of the driver from the owner of the offending vehicle in response to notice u/s 133 M.V. Act.

XII. MEDICAL EXAMINATION/PM REPORT

(i) In case the final opinion on the MLC of the injured is not given by the doctor, the IO shall ensure that the MLC along with the treatment papers of the injured shall be deposited for final result at the earliest possible. **(However, pursuant to the order of the Hon'ble High Court of Delhi dated 15.1.10, in case of 'grievous injury', the IO is supposed to verify and submit the 'insurance certificate' before the MACT within 48 hrs alongwith the intimation of factum of accident. Hence, a clarification be sought from the doctor in all U/O cases – Sample Application at ANNEXURE-S)**

(ii) In case where the victim or the driver of the erring vehicle has consumed alcohol, the IO shall request the doctor to preserve the blood sample which shall be sent for examination to ascertain the quantity of alcohol in the blood.

(iii) The IO shall follow up with the Record Clerk or Forensic Department for timely collection of MLC/PM Report.

XIII. LEGAL ACTION UNDER M.V. ACT

(i) The driver of the offending vehicle if found without license, be booked u/s 3/181 M.V. Act and the owner be booked u/s 5/180 M.V. Act.

(ii) In case minor is found driving the vehicle, a report be sent to Juvenile Justice Board u/s 4/181 M.V. Act

(iii) If the driver has consumed Alcohol/intoxicants, he should be examined medically and booked u/s 185 M.V. Act.

(iv) If the vehicle involved in the accident is uninsured/or not having valid insurance, the driver as well as owner be booked u/s 196 M.V. Act.

(v) If the driver if found in possession of a forged driving license, a separate case u/s 465/468/471/474 IPC be registered and investigated. Similar action is to be taken in case of forged insurance policy etc.

XIV. MISCELLANEEOUS INSTRUCTIONS

(i) In an accident where no injury is caused to any person but vehicles are damaged, it can be dealt with u/s 279 IPC or u/s 184 M.V. Act depending on the circumstances of case to avoid unnecessary harassment.

(ii) The Police has no power to accept compromise or ask the parties to enter into a compromise as these offences are not compoundable.

(iii) A report/ information involving a Diplomatic Car having (CD No.) to be sent to the Principal Secretary (Home), Govt. of NCT, Delhi.

(iv) The first priority of the local police/PCR van staff is to hospitalize the victim for medical treatment and not to wait for police formalities.

(v) The seized vehicles of the victims / complainants should be released to the owner on furnishing surety bond after completing the investigation.

(vi) In accident cases registered u/s 279/337/338/304-A IPC, sections 427/429 IPC should not be applied as their ingredients are different.

(vii) The IO should be thorough with the provisions of IPC and MV Act as already discussed in lesson 2.

XV. CONCLUSION OF INVESTIGATION

(i) The police report u/s 173 Cr.P.C is a conclusion that an Investigating Officer draws on the basis of material collected during investigation and such conclusion can only form the basis for the competent court to take cognizance thereupon and to proceed with the case for trial. Therefore, the investigation should be concluded logically based on the admissible evidence.

(ii) The Investigating Officer should ensure that memos or *"Furds*" and statements of the witnesses are properly recorded. The investigation of accident cases should have to be completed within 30 days after the arrest of the accused person. It is advisable that the victim or the family of the victim in Fatal Accidents case is apprised of the developments in the investigation.

(iii) The Charge Sheet in accident cases should be filed within stipulated period mentioning the following

a. names of the party,
b. nature of information,
c. names of the witnesses and
d. the conclusion drawn on the basis of the evidence collected during investigation against the accused.

(iv) In accident cases following point are required to be taken note of, while preparing the Charge Sheet:

a. Permissible speed on the road where accident has taken place.
b. Site plan indicating exact position of the vehicle and the victim involved in the accident.
c. Condition of the road lighting i.e. whether sufficient light was there or otherwise.
d. Number of vehicles and other road users on the road at the time of accident viz. whether the road traffic was dense or otherwise.
e. Lane of the vehicle in which the accident took place.
f. Approximate speed of the erring vehicle.
g. Whether the driver of the erring vehicle was listening to mobile or he was talking to someone else sitting beside him?
h. Width of the road, whether it was having central verge or not.
i. Was there any speed breaker in close proximity?
j. Condition of the road whether raining or otherwise.

Reference Material:

1. SO No 157/2008 – ANNEXURE-A of the manual
2. MV Act
3. Indian Penal Code
4. MACT Manual

ANNEXURE-III

Delhi Police

STANDING ORDER NO. 157 OF 2008

Investigation of Road Accidents Cases.

INTRODUCTORY:

It is a well known fact that road accidents are on a rise and many of these accidents result in fatalities. It is becoming more and more apparent that the investigations of accident cases (fatal or non-fatal) are not done in a proper and scientific manner. As a result the accused are acquitted on the basis of benefit of doubt or lack of evidence and in some cases even the courts have passed severe strictures or remarks against the Investigating Officers. It has been further observed that road accident cases are not given appropriate importance in many of the police stations.

Not only do the proper and scientific investigations of such cases assume importance, but also the arrival of the PCR van and the local police at the scene of occurrence are equally important. Immediate removal of the injured to the hospital can save a precious life. Delayed action on the part of the police to remove an injured to the hospital has on occasions drawn adverse media attention resulting in criticism amongst the citizens.

1. PRELIMINARY STAGE :-

i) INFORMATION ON ACCIDENTS :

As soon as an information of a road accident is received in the Central Police Control Room (CPCR), the same should be communicated to the nearest PCR van quickly for the removal of the injured to the nearest hospital for immediate medical attention and simultaneously to the concerned police station for detailing the Emergency/Investigating Officer to the scene of occurrence and taking up the investigation without any delay. In case the information is received directly in the police station, the IO should be dispatched immediately and the PCR informed. In all accident cases, the Central Police Control Room (CPCR) shall immediately inform Traffic Control Room which shall, in turn, direct area Traffic Inspector/Zonal Officer to reach the accident site immediately.

ii) INVESTIGATING OFFICERS KIT:

The following equipments shall be carried by the IOs while proceeding to the scene of accident:-

1. First Aid Box.
2. Torch light (during night only).
3. Measuring tapes cotton 100 feet.

4. Steel measuring tapes.
5. Crime Investigation Box.
6. Sheets of Papers, pencils of various colours, carbon papers and Fountain pen.
7. Blank Case diaries.
8. Camera fitted with flash light unit.

The officers investigating accident cases may avail the services of a professional private photographer, depending on the circumstances.

iii) INSPECTION OF THE SPOT:

In accident cases, whether fatal or simple, the inspection of the spot in a professional and scientific manner is very important. The skid-marks indicate the probable speed of vehicle(s) which can be an important tool to help investigating officer to arrive at some pertinent conclusions. The direction(s) of the vehicles involved in the accident, condition of the road, whether one-way or two-way, road-curve, visibility at the time of the accident, existence of speed-breakers or potholes on the road, skid-marks etc. should invariably find mention in the Spot Inspection Note (Mauka-Mulahiza) of the case diary.

iv) MECHANICAL INSPECTION:

If the vehicle(s) involved in the accident are causing hindrance in the smooth flow of traffic, it is advisable to remove them to a side. As far as possible the mechanical inspection of the vehicles should be done at the spot itself. The IO should note down the details of damages of vehicle(s) involved in an accident minutely, such as area of damage, extent of damage, point of impact between the vehicles and see if there are paint-marks or any other evidence transferred from one vehicle to another at the time of impact. He should bring them on record through his observations mentioned in the endorsement of the ruqqa, statements of witnesses, photographs etc.

If the Mechanical Inspector or any other expert is not readily available at the spot, it should be got done in the police station after it has been brought from the spot. Many IOs are trained in inspection of vehicles which are involved in accidents. They shall normally carry out inspection of vehicles involved in accidents themselves and prove the same before the trial court. In case of those not trained, inspections shall be carried out by the officers in the District/Sub-Division trained for the purpose. In case of doubt, M.T.I. staff from Provisioning and Logistics Unit may be summoned for expert opinion/advice, as the case may be. The vehicles should be released only after their mechanical inspection has been done. There are professional private Mechanical Inspectors whose services can be availed and their fee may be got reimbursed from the investigation fund.

v) FORENSIC EXAMINATION:

In an accident case inevitably there is an impact between two objects – vehicle with vehicle or vehicle with a living being or vehicle with any other object etc. The Locard's Principle of Exchange is the fundamental rule upon which forensic science is based. It states that, "with contact between two items, there will be an exchange." Such exchanges of paints, clothes, hair, blood, tissues, etc. etc. could either be easily visible or

of a minute nature which escapes the naked eye. In fatal accident cases, efforts should be made by the I.O. to trace out and seize in an appropriate manner all such relevant evidence. Where necessary, a forensic expert should be requisitioned at the spot to examine the scene of accident and the vehicle(s) or at least the exhibits should be collected carefully by the I.O. with the help of Crime Team and sent to the FSL for an opinion. In accident cases, particularly fatal accident, where there are no eye witnesses such evidence could be critical in nature. This needs to be closely supervised by the district DCP, so that cases are not overlooked or ignored in a routine manner.

vi) SITE PLAN:

In an accident case, properly drawn site plan renders far more valuable evidence than the oral testimony of witnesses as the site plan speaks a lot of facts itself. A site plan shall be prepared according to scale which should indicate the positions and in which the vehicles were found, point of impact, position of the deceased, skid-marks, width of the road, central verge or road-divider, lamp-post, etc. depending on the circumstances of the case site plan. The investigating officer may, if necessary, requisition the services of a qualified draftsman at the scene of accident. Different colour markings could also be used to describe any other circumstance/evidence having a bearing on the case.

vii) PHOTOGRAPH:

An I.O. may himself take photographs of the spot or he may take assistance of the official photographer or even of a professional photographer. Where there are tyre-marks or skid marks of any other kind which are relevant to fix responsibility of the accident on anyone, they should be photographed after placing a chit near them bearing the details of the case and signatures of the witnesses present at the spot so that at some later stage it may be possible to co-relate the photograph to a particular case. A scale-bar to illustrate the length of the marks shall also be used while photographing. Damages occurred by the vehicles on account of the accident, should also be got photographed from all angles to fully illustrate the extent of damage.

2. INVESTIGATION :-

i) RECORDING OF F.I.R.:

If the condition of the injured person permits, his statement should preferably form the basis of FIR. The I.O. should keep in mind that the safety and life of the injured must receive precedence over any other thing. Both, the statement on which the FIR is to be registered and subsequent statements of the witness(s), the description of the accused and the vehicles involved in the accident should be mentioned as far as possible.

ii) FATAL CASES:

(a) Investigation by an Upper Subordinate- Fatal accident cases necessarily involve conducting inquest proceedings and, therefore, shall invariably be investigated by an upper subordinate officer. The SHO shall **ensure that the IO is well versed with the law and procedure** required for conducting investigation of such cases.

(b) The IO while proceeding to the spot of a fatal accident shall also carry sheets of white cloth supplied to the Malkhanas to cover dead bodies. In no case the body of the deceased shall be allowed to remain uncovered. Shrouds to be kept in PCR vans and the Police Stations shall be procured centrally by the P&L Unit and supplied to all districts/Units and stocks replenished when the need arises.

(c) **Post-Mortem Examination-** Inquest Papers i.e. Brief facts, Form No. 25.35(B) PPR, Identification statements, MLC, copies of FIR/DD entries, etc. should be filled in with due care and caution. The IO shall remain present at the time of the PM examination and after the same is over, the dead body be handed over to the relatives after re-identification under proper receipt. In all fatal hit and run cases where the offending vehicle is not known and also victims' identity is not known till the time of post mortem, the ACP/Sub-Division shall satisfy himself that the case is of road accident and not related to any other crime. He shall also record the same on the inquest report of the case.

3. PREPARATION OF CASE FILE:-

The I.O. should ensure that the memos or fards and statements of witnesses are properly recorded. The investigation of all accident cases shall be completed at the earliest and the charge sheet submitted thereafter without delay. All other directions concerning investigation contained in the Criminal Procedure Code, Evidence Act, MV Act, Police Rules, Standing Orders etc. shall be strictly complied with.

It is advisable that in all fatal accidents, the Investigating Officers should visit the families of the victim(s), if they are located in Delhi, to inform them about the progress of the investigation of the case and the action taken by the Police. The IO shall also record a case diary to this effect.

The SHOs will ensure that all officers of police stations, detailed for investigation work, make fully conversant with the provisions of the S.O. They shall also arrange for the equipments required to be carried by the IOs detailed on this duty. These articles should be kept ready/handy with the Duty Officer to avoid delay. In addition to the equipments indicated above, stretchers will also be taken to the spot, if necessary. These arrangements should be made by all the SHOs without demur.

4. CHARGE SHEET:-

Fatal accidents or simple accidents involving physical injuries are to be necessarily dealt with u/s 279, 304-A IPC or 279/337/338 IPC as the case may be. After this, the vehicles are to be seized, the defaulting driver arrested, the mechanical inspection of vehicles done, the charge sheet should be prepared and submitted in the court. These cases are summon-trial-cases and require to be sent to court after completion of the investigation within 6 months form the date of the arrest of the defaulting driver, as is required u/s 167 (s) Cr.P.C. The investigation carried beyond 6 months without the permission of the Metropolitan Magistrate is bad in law and not maintainable in the court.

The following points are required to be taken note of while preparing charge sheet u/s 173 Cr. P.C. in accident cases:

i) Permissible speed on the road where accident has taken place.
ii) Site plan indicating exact position of the vehicle and the victim involved in the accident.
iii) Condition of the road light whether sufficient light was there or it was not.
iv) Number of vehicles and other road users on the road at the time of accident viz. whether the road was crowdie or otherwise.
v) Lane of the vehicle in which the accident took place
vi) Approximate speed of the erring vehicle.
vii) Whether the driver of erring vehicle was listening to mobile or he was talking to someone else sitting beside him?
viii) Width of the road whether it has central verge or not.
ix) Was there any speed breaker in close proximity?
x) Condition of the road whether raining or otherwise.

5. MAINTENANCE OF STATISTICS:-

The Traffic unit shall have all statistics relating to road accidents in Delhi maintained in the unit and prepare a monthly review suggesting preventive measures. The SHO shall ensure timely dispatch of the accident reports to the DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi.

i) Daily diary of Accident Report: This report shall be furnished by the SHO in **Appendix-I** to cover 24 hours period of all the accident cases. This diary shall include fatal, grievous injury, simple injury, simple collisions and non-injury accidents. In other words, this diary shall contain information about registered cases, cases in which only challans under Motor Vehicle Act were prepared following the occurrence of any road accident and even cases where challans under M.V. Act were not considered necessary and only reports were lodged in Police Station Daily Diary. These reports shall be sent by the SHO daily by 10 AM to the district DCP office who will in turn compile information of the entire district in the prescribed proforma and a copy of the same will be sent to the office of DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi by 5 PM everyday. The copies of FIRs shall also be attached alongwith these reports.

ii) Report by Traffic Inspector: The Traffic Inspector and the Zonal Officer of the Traffic Unit shall also collect required information from the police station or the Investigating Officer and submit to the DCP/Traffic (VIP), Teen Murti Traffic Lines, Mother Teresa Crescent, New Delhi.

6. SUPERVISION OVER INVESTIGATION:-

The concerned SHO and ACP shall be responsible for supervising the investigation and proper pairvi of such cases in court. In fatal accidents, the scene of

occurrence shall be visited by the concerned SHO/Inspector (Investigation) and concerned Traffic Inspector immediately or at the earliest.

7. DIRECTIONS OF THE HON'BLE HIGH COURT OF DELHI:-

To ensure that police officers investigating accident cases conduct investigation in a professional manner, the Hon'ble High Court of Delhi, in a Revision Petition (Crl.) No. 114 of 2006 – Abdul Subhan Versus State (NCT of Delhi), has also issued certain directions for proper investigation of road accident cases. For the benefit of IOs, these guidelines are reiterated as under:-

i) In most of the cases the site plans are not produced or the same are of a very unsatisfactory nature. It is imperative that the investigating officer should be provided with maps of the roads drawn to scale to that accurate site plans can be produced as evidence before courts. The exact point of impact as well as tyre skid marks and the point at which vehicles come to rest after the collision should be demarcated clearly. The length of the tyre skid marks of the vehicles involved in the impact, indicate the speed at which the vehicles were traveling. This would enable the courts to examine the evidence in a much objective manner and the courts would not have to face vague and subjective expressions such as 'high – speed'.

ii) The mechanical inspection reports that are prepared, in a majority of cases are very superficial and of cursory nature. The inspection ought to be carried out by qualified personnel who are able to indicate in their reports the exact physical condition of the vehicles. They should be able to point out exactly the damage suffered by the vehicles as a result of the impact during the accident. The mechanical inspection report should indicate all the tell-tale signs of the collision such as the paint of one vehicle rubbing off on the other. It should also indicate as to whether the vehicles were mechanically sound or not prior to the impact so as to enable the court to arrive at a conclusion as to whether the collision took place due to human rashness or negligence or due to mechanical failure beyond human control.

iii) The photographs of the scene ought to be taken not only of the vehicles involved in the collision but also of the site and surrounding areas so that the exact topography can be easily understood by courts.

iv) The prevalent weather conditions must be noted and mentioned by the investigating officer. This would establish situations like whether the road was slippery due to rain or otherwise, whether there was poor visibility due to fog or mist etc. or otherwise.

v) The path of movement of the vehicles must be sought to be established in the course of investigation and should not be ambiguous and doubtful.

vi) The drivers of the vehicles involved must also be subjected to tests to reveal whether they had consumed any intoxicants.

vii) All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case which when taken objectively should lead to the inescapable conclusion that a conviction is maintainable.

8. MISCELLANEOUS INSTRUCTIONS:-

(i) Accidents when no injury is caused to any person but only vehicles are damaged, can either be dealt with u/s 279 IPC or u/s 116/117 MV Act and these sections have almost the same thrust and effect. Though in cases where impact is quite severe and the damages are severe, the action should normally be taken u/s 279 IPC but in simple accidents, prosecution u/s 116, 117 or other provisions of the MV Act should be preferred, so that unnecessary harassment is not caused to the concerned individuals. Such cases cannot be many and can be easily identified by the supervisory officers.

(ii) The police officer has no power to accept a compromise or ask the parties to enter into a compromise. The offence u/s 279 IPC and 116, 117 MV Act and other provisions of MV Act, etc. is against the state and non compoundable in courts.

(iii) Report/information of road accidents involving C.D. (diplomatic) cars are to be sent to the Principal Secretary (Home), Govt. of N.C.T. of Delhi.

(iv) All police officers and PCR vans should rush the accident victims to the nearest hospital or trauma centre.

(v) It is the duty of the police officer to ensure that the treatment of the accident victim starts immediately as soon as a victim is brought to the hospital and it need not wait for police formalities.

(vi) The vehicles of the victims and/or complainants seized by the police as case property may be released to the owner on furnishing a surety bond after completing necessary investigation such as getting the vehicle photographed, mechanical inspection etc. This was observed in Criminal Writ Petition No.1476/2007 - Arun Handa Vs. Govt. of NCT of Delhi & Ors.

(vii) While registering FIR under section 279/337/338/304-A IPC etc. it should be kept in mind that Section 427 IPC should not be added as criminal intention is essential ingredient of Section 427 whereas it is not so in the cases u/s 279/337 IPC etc.

(viii) Similarly it has been observed that some times FIR u/s 279/429 IPC are registered. As mentioned above Section 279 IPC deal with rash or negligent driving whereas section 429 IPC, presuppose mensrea. Further, cases could be registered under section 429 where mischief is committed by killing, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox of whatever value as an act of mischief. Where mere rash and negligent driving is involved, cases under section 279 IPC should be registered.

The S.O. on the subject “Investigation of road accidents cases” aside there are two other important Standing Orders. Standing Order No. 328 regarding statutory obligation of police officers under section 158 (b) M.V. Act to forward the claims to concerned MACT and Standing Order No. 339 dated 8/02/2008 regarding release of vehicles

belonging to accident victims. Strict compliance of these Standing Orders should also be ensured while dealing with road accident cases.

This S.O. is issued in supersession of old S.O. no. 157 issued vide this Hdqrs. No. 46722-821/C&T/AC-V/PHQ, dated 14.8.2008.

-sd-
(Yudhbir Singh Dadwal)
Commissioner of Police:
Delhi.

No. 52221-320 /C&T (AC-V)/PHQ., Dated Delhi the10/09/2008

Copy to:-

1. All Special Commissioners of Police, Delhi.
2. All Joint & Addl. Commissioners of Police, Delhi.
3. All DCsP of Districts/Units, including FRRO, Delhi/New Delhi.
4. SO to CP, LA & FA to CP, Delhi.
5. All ACsP/PHQ, including ACP/IT Centre (PHQ) with CD.
6. All SHOs/Traffic Inspectors in Delhi.
7. Reader to C.P./Delhi.
8. All Inspectors/PHQ, Delhi.
9. HAR/PHQ with 5 spare copies.
10. Library/PHQ, Delhi with 5 spare copies.

APPENDIX-I

Daily Traffic Accident Report

POLICE STATION_____TO _____DATE_____

_____

_____

Date and time of accident	Exact place of occurrence	Vehicles involved (Give Registration No.)	Nature of accident (a) Collision with or avoidance of or (b) Other kind i.e. hitting fixed objects over-turning etc.	No. of persons killed/injured (grievous/simple injury) etc.	Aged, sex of person dead or injured.	DD/FIR No., u/s and date of cases with brief facts results of Investigation until the times of dispatch of the report.

ANNEXURE-IV

CHECK LIST FOR COMPLIANCE OF CLAIMS TRIBUNAL AGREED PROCEDURE

Case FIR No. _____ Date_____u/s_____
P.S._____Name of IO _____
Mobile No of IO_____ AIR No_____

Note: IO must fill up the proforma by ticking the appropriate box to ensure compliance of all directions as mentioned in Claims Tribunal Agreed Procedure. The concerned SHO and ACP/SDPO shall also ensure compliance of all the points mentioned below.

PART-I
IMMEDIATE ENQUIRY FORM
(For gathering information to be submitted within 48 hours)

1. FIR No., date & u/s _____
2. Name of the Police Station _____
3. Source of Information _____
   (Name, Address & Tel. No.)
a) Driver/Owner _____
b) Victim _____
c) Witness _____
d) Hospital/Medical facility _____
4. Date _____
5. Time and place of accident _____
6. Nature of Accident
a) Simple b) Grievous c) Fatal _____
   (if MLC is U/O it be clarified from the doctor if the injury could be grievous)
7. Name & address of the injured/deceased _____

   _____
8. Whether medical attendant for victim
   secured by erring driver/owner in terms
   of section 134(a) MV Act _____
9. Details of the hospital where taken _____

10. Multi angle photographs to be taken _____
11. Detailed site plan(scaled in case of fatal) _____
12. Details of the eyewitnesses (attach additional sheets, if required)
    (i) Name _____
    (ii) Address _____
    (iii)Contact Number _____
    (iv)Statement _____

13. Registration Particulars of the vehicle
    (if available immediately)
    (i) Registration No. _____
    (ii) Engine No. _____
    (iii)Chassis No. _____

14. If vehicle is registered outside Delhi,
    the name of the RTA_____District_____State_____

15. Insurance Details **(in grievous injury, the Insurance Certificate and verification report regarding its genuineness be submitted to MACT within 48 hrs)**
    (i) Name & address of the insurance company _____

    _____

    (ii) Policy No. _____

    (iii)Insurance certificate and validity of policy_____

16. Details of driving license of erring driver_____
    (i. whether valid for the type of vehicle being driven)
    (ii. whether he is holding any other license – obtain in writing from driver)

    _____

17. Details of driving license of the victim, (wherever applicable)_____

    _____

18. If the D/L is issued from outside Delhi,
    the name of the RTA_____District_____State_____

19. Name and address of the owner / driver (if available) _____

    _____

PART-11

(For filing of detailed accident report within 30 days)

1. **Collection of relevant evidences:-**

(i) Photographs of the scene of accident from all angels ☐

(ii) In the case of death:-

(a) Proof of age of deceased ☐
Birth certificate
School certificate ☐
Any other----------

(b) Proof of occupation ☐

(c) Proof of income
Salary slip ☐
Income tax returns ☐
Agricultural income ☐
Others----------

(d) No. of legal representative ☐

(iii) In case of injuries:-
(a) Proof of injuries suffered (MLC etc.) ☐
(b) Expenses incurred by the injured ☐

2. **Collection of relevant documents :-**

(i) Driving license ☐
(ii) R.C ☐
(iii) Insurance Certificate ☐
(iv) Fitness (in case of commercial vehicle) ☐
(v) Permit (in case of commercial vehicle) ☐
(vi) MLC ☐
(vii) Death certificate ☐
(viii) P.M. Report ☐
(ix) Birth certificate of deceased ☐
(x) Salary slip, if employed ☐
(xi) Certificate of employer ☐

(xii) Income-Tax return ☐

(xiii) Prescription slip of doctor ☐

(xiv) Bill for medical expenses. ☐

3. Verification of above mentioned documents:-

(i) Driving license Verified ☐
(to be valid for vehicle being driven)
If not verified, the reason thereof----------

(ii) R.C Verified ☐

If not verified, the reason thereof----------

(iii) Insurance Certificate Verified ☐

If not verified, the reason thereof----------

(iv) Fitness (in case of commercial vehicle) Verified ☐

If not verified, the reason thereof----------

(v) Permit (in case of commercial vehicle) Verified ☐

If not verified, the reason thereof----------

(vi) MLC Collected ☐

(vii) Death certificate Verified ☐

If not verified, the reason thereof----------

(viii) P.M report Collected ☐

If not collected, the reason thereof----------

(ix) Birth certificate of the deceased(s) Verified ☐

If not verified, the reason thereof----------

(x) Salary slip Verified ☐

If not verified, the reason thereof----------

(xi) Certificate of employer Verified ☐

If not verified, the reason thereof----------

(xii) Income-Tax return Verified ☐

If not verified, the reason thereof----------

(xiii) Prescription slips of doctor Verified ☐

If not verified, the reason thereof----------

(xiv) Bill for medical expenses Verified ☐

If not verified, the reason thereof----------

4. Whether Detailed Accident Report (DAR) filed with the claim Tribunals within 30 days or not.

(i) Filed ☐

(ii) If not filed, the reason thereof

---

5. DAR shall be accompanied by the following documents:-

(i)	Report U/S 173 Cr.P.C.	☐
(ii)	FIR	☐
(iii)	MLC	☐
(iv)	PM Report	☐
(v)	Photographs	☐
(vi)	Site Plan	☐
(vii)	Mechanical Inspection report	☐
(viii)	Seizure memos	☐
(ix)	Death Certificate	☐
(x)	Proof of age of deceased	☐
(xi)	Occupation and income proof of deceased	☐
(xii)	Age of the legal representatives of the deceased	☐
(xiii)	Proof of injuries and expenses in the case of injuries along with affidavit about the verification of the said documents.	☐

6. Whether the driver, owner, claimants and eye-witness have been produced before the Claim Tribunals alongwith the DAR or not.

(i) Produced

* Driver	☐
* Owner	☐
* Claimants	☐
* Eye-witness	☐

(ii) If not produced, the reason thereof in case of

* Driver----------
* Owner ----------

* Claimants----------
* Eye-witness ----------

7. Whether copy of DAR has been furnished to the concerned insurance company or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof

---

8. Whether copy of DAR has been furnished to the claimants or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof

9.Whether copy of DAR has been furnished to the Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building,Patiala House Court, New Delhi or not.

(i) Furnished ☐

(ii) If not furnished, the reason thereof

---

10. Whether an advance notice has been given to the concerned Insurance Company about the date of filing of the DAR before the Claim Tribunals or not.

(i) Given ☐

(ii) If not given, the reason thereof

---

11. Whether the Claim Tribunal has accepted the Detailed Accident Report or not

(i) Accepted ☐

(ii) If not accepted, the reason thereof

---

12. Has the investigation of the accident been completed within 30 days

Yes ☐
No ☐

If no, the reason beyond his control, such as

(i) Hit & run accident ☐

(ii) The parties reside outside the jurisdiction of the court ☐

(iii) The DL is issued outside the jurisdiction of the court ☐

(iv) The victim has suffered grievous injuries and is still undergoing treatment ☐

(v) Any other reason(specify)..……..
…….

13. Whether the IO has approached the claim tribunal for extension of time.

Yes ☐

No ☐

If yes,

(i) Date of extension of time----------

(ii) Period of extension of time----------

14. Whether the IO has complied the points within the extension time

Yes ☐

No ☐

If no, reason thereof ----------

Signatures of:-

Investigating Officer

Inspector Investigation

SHO

ACP

Addl.DCP-II/C (through Inspector MACT Cell)